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The Political Theories of Martin Luther

By

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INTRODUCTORY NOTE

THIS study was undertaken in the preparation of a thesis on *Martin Luther's Political Reforms of Germany* in part fulfilment of the work required by the George Washington University for the degree of Doctor of Philosophy. The field proved so inviting and so important that it has led to a work of larger proportions than originally anticipated, and is given to the world in the hope that it may be of service in throwing some additional light on the political theories of the great religious reformer of the sixteenth century and on the credit that belongs to him as a forerunner of the modern theory of the state.

LUTHER HESS WARING.

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The Political Theories of Martin Luther

THE POLITICAL THEORIES OF MARTIN LUTHER

CHAPTER I

HISTORICAL INTRODUCTION[1]

ARISTOTLE, in a sense the founder of political science,[2] declares that man is by nature a political animal[3] and that the state is natural and necessary to him. It comes into being for the sake of mere life, but it continues to exist for the sake of the good life. It has no more important function than that of securing intellectual culture and physical training to its youth. Whether the sovereign power reside in one, in the few, or in the many, the true end of the state

[1] A bibliography of the important works consulted and cited in this study is given in the Appendix.

[2] Aristotle: *Politics*, i., 2, iii., 7, viii., 1. Bluntschli: *The Theory of the State*, p. 35. Dunning: *Political Theories Ancient and Mediæval*, p. 49 *et seq.* Pollock: *An Introduction to the History of the Science of Politics*, p. 17 *et seq.*

[3] ἄνθρωπος φύσει πολιτικὸν ζῷον *Politics*, i., 2.

is the perfection of all its members. Government conducted in the exclusive interest of any part, though a majority of its citizens, is a perversion. The law is superior to the individual man, and its sovereignty is above every form of personal sovereignty.

The ancient state, in general, was everything. It included and interfered with all the relations in life. Without it, the citizen was nothing, and he had no individual freedom. The idea of the state embraced his entire life "in community, in religion and law, morals and art, culture and science."[1] Religion and government, or church and state, were identical, and continued so in theory and generally in fact to the time of Constantine.[2]

In the history of Rome there was a time when the word of Cæsar was the law and the worship of Cæsar was the religion of the world. As Pontifex Maximus he was the high priest of the national religion. He held control of both church and state in his own person. Indeed, in a large sense, he was the state, and he was the church.

Identity of worship, among ancient civilised peoples, constituted the unity of the state. Throughout antiquity the essence of religion was associated

[1] Bluntschli: *The Theory of the State*, p. 56.
[2] Prall: *The State and the Church*, p. 151.

with nationality, and the religious community was contained in the political community of the state.[1] This identity of two great institutions so generally distinct in modern life, this fusion and confusion of church and state, arose from the common germ from which they both sprang, *i.e.*, the family.[2]

Aristotle wrote: "The care of the public sacrifices of the city belongs, according to religious custom, not to special priests, but to those men who derive their dignity from the hearth, and who in one place are called kings, in another prytanes, and in a third archons."[3] The sacerdotal character of primitive royalty is clearly shown by ancient writers. The office of king and priest was united in one. "Just as in the family the authority was inherent in the priesthood, and the father, as head of the domestic worship, was at the same time judge and master, so the high priest of the city was at the same time its political chief. . . . From the fact that religion had so great a part in the government, in the courts, and in war, it necessarily followed that the priest was at the same time magistrate, judge, and military chief. . . . This royalty, semi-religious, semi-political,

[1] Geffcken: *Church and State*, i., 37, 59.
[2] Blackie: *What does History Teach*, p. 68.
[3] Aristotle: *Politics*, vii., 5, 11 (vi., 8).

was established in all cities, from their foundation, without effort on the part of the kings, without resistance on the part of the subjects."[1]

The Romans gave a more definite form to law, as distinguished from morality, and thus limited the jurisdiction or the sphere of the state. Furthermore, they declared the will of the people to be the source of all law.[2] Great as they were as administrators and lawgivers, they have left us nothing of importance in the history of political theory.[3]

With the introduction and early extension of Christianity, whose Founder and early followers were persecuted to the death by various governments of their day, another limitation was placed upon the sphere of the state. The church as an organisation was viewed and kept separate and distinct from the state.[4] "The words of Christ, 'My kingdom is not of this world,' mark a crisis in history, the birth of a new movement which was

[1] Coulanges: *The Ancient City*, pp. 235–237.

[2] Bluntschli: *The Theory of the State*, p. 38.

[3] Pollock: *An Introduction to the History of the Science of Politics*, pp. 31, 33. Cicero asserts that the state is the highest product of human power, and that there is nothing in which human excellence comes nearer the will of the gods than in the founding and maintenance of states. Cicero: *De Repub.*, i., 7. Bluntschli: *The Theory of the State*, p. 37.

[4] Prall: *The State and the Church*, p. 151.

to assign to each of the two powers, the state as well as the religious community, their separate province."[1] The entire religious life of the community was felt to be essentially independent of the state, although not altogether withdrawn from its care and influence, and the state was limited to the field of politics and law. The dualism of church and state became most marked.[2] The historian Gibbon viewed the church, as it became during Constantine's reign and remained for years after his death, as a republic or state within the state; but it was rather a superordinated genus embracing all the civil functions of the state. For a period of fifteen hundred years, one great question that more than any other in this field of government clamoured for a solution was the relation that properly exists between these two great institutions, the church and the state. "The whole life and character of western Christendom consists of the incessant action and counteraction of church and state."[3]

Galerius, as early as 311 A.D., issued an edict, which also bears the names of Constantine and Licinius, declaring paganism to be the religion of the state, but tolerating Christianity, provided

[1] Geffcken: *Church and State*, i., 60.
[2] Bluntschli: *The Theory of the State*, p. 39.
[3] Ranke: *History of the Reformation in Germany*, i., 4.

its adherents took no action against the established laws, religion, and government of the state.[1] Two years later, Constantine, Emperor of the West, and Licinius, Master of the East, issued the famous Edict of Milan,[2] granting absolute freedom of worship, giving full and free power to the Christians of exercising their own religion. The same free and unrestricted liberty of worship, according to the dictates of the individual conscience and reason, with a view to peace, was likewise conceded to all others as to their own religion or observance, that each might have the liberty of the worship he preferred. Church property that had been confiscated or sold from the Christian communities was ordered to be at once restored, without consideration. Neander declares that this new law implied the introduction of a universal and unconditional religious freedom and liberty of conscience—a thing, in fact, wholly new.[3] In issuing this edict, Constantine expresses the hope that in granting this liberty he may have Heaven's blessing; but there is nothing in the

[1] Innes: *Church and State*, pp. 21–23. Thatcher: *The Ideas that have Influenced Civilization*, iv., 17. Geffcken: *Church and State*, i., 90.

[2] Eusebius: *Ecclesiastical History*, Book x., Chap. v. Innes: *Church and State*, pp. 23–25. Thatcher: *The Ideas that have Influenced Civilization*, iv., 19.

[3] Innes: *Church and State*, p. 25.

language of the document showing any recognition of the right of the individual to freedom of conscience or liberty of worship. Tertullian, writing in the preceding century, asserted that "the rights of man and the law of nature give every one the power of worshipping as he thinks proper; and the religion of one man neither injures nor benefits another. Force is indeed foreign to religion."[1]

Constantine's Edict of Toleration of 323 A.D. recognised freedom of conscience and of worship. He summoned church councils to settle questions of religious doctrine, and published their proceedings. He banished dissenting ecclesiastics, prohibited assemblies of heretics, and confiscated their houses of worship. He paid salaries to the Christian clergy from the imperial treasury and bestowed certain judicial functions on bishops.[2] It is asserted that after he made Constantinople his capital, he prohibited immoral forms of pagan worship and their ordinary public forms of sacrifice, but this has not been definitely established.

During Constantine's reign another voice is heard in behalf of religious liberty. Lactantius, tutor to the Emperor's son and a Christian convert, asserted: "Religion cannot be compelled; it is by

[1] Innes: *Church and State*, pp. 30, 31.
[2] Sheldon: *History of Christian Doctrine*, i. 173.

words rather than wounds that you must bend the will. Nothing is so much a matter of free will as religion. Our God is the God of all, whether they will it or no; but we do not desire that any one should be compelled to worship Him. . . . Religion is the one region in which liberty has fixed its domicile and home."[1] In 353 Constantius ordered all heathen temples closed, and declared further: "We will that all abstain from sacrifices: if any be found doing otherwise, let him be slain with the sword."[2]

It did not require centuries, after the removal of the seat of imperial government from the Tiber to the Bosphorus, for the old Roman Empire, as a unit, to disappear. The Bishop of Rome naturally acquired leadership in the West. He defended that city and its people against the northern barbarians, but he also won these same barbarians to Christianity. The universal temporal dominion of the old empire passed away, both in theory and in fact, but it was superseded by the idea of universal spiritual dominion. As early as the end of the fifth century, Bishop Gelasius (492–496) declared that "the See of St. Peter has the right to decide and judge in all matters concerning the faith; no one dare criticise its judg-

[1] Quoted by Innes: *Church and State*, p. 31.
[2] *Ibid.*, p. 33.

ment; as the canons determine that persons from all parts of the world can appeal to it, no one, on the other hand, can appeal against it."[1] "It is just at the moment when the Roman Empire is breaking up and disappearing," says Guizot, "that the Christian church gathers itself up and takes its definite form. Political unity perishes, religious unity emerges."[2]

The year 754 was a turning point in the relation of church and state in Western and Southern Europe. Pippin, King of the Franks, accepting a proposal of the Pope, overthrew the Lombards, who were pressing the eternal city, and presented Rome and the surrounding territory to the Pope.[3] Twenty years later, his son Charles the Great, better known as Charlemagne, assumed the iron crown and ruled as protector of Rome for a score of years. He was nominally, however, under the power of the Roman Emperor until the close

[1] Geffcken: *Church and State*, i., 147.

[2] See Kelly: *Evolution and Effort*, p. 108.

[3] "Pippin had founded the temporal power of the popes in 754, by transferring the cities of the Exarchy to Pope Stephen II, who already exercised a temporal power in Rome. The worldly sovereignty grew gradually from this basis. Pippin greatly strengthened the influence of the church by gifts of land, by increasing the privileges of the priesthood, and by allowing the ecclesiastical synods, in many cases, to interfere in matters of civil government." Schoenfeld: *German Historical Prose*, p. 35, note 2.

of that century. On Christmas day, in the year 800, the Pope, in St. Peter's at Rome, placed on Charlemagne's head the crown of the Cæsars, and he was acclaimed as "Charles Augustus, Emperor, crowned of God."

The capitulary of Charlemagne of 802 has been well termed, in a certain sense, the foundation charter of that Holy Roman Empire that continued for more than a thousand years.[1] Although the ideals and principles there set forth were never fully realised, they nevertheless set forth functions and objects of civil government worthy of note. The Emperor chose the most prudent and the wisest of his nobles to make diligent inquiry and report to him where any provisions were contained in the law otherwise than according to Christian right and justice, that he might better it, and to fully administer law and justice according to the will and the fear of God, whether the matter concerned the church, or the poor, or wards and widows, or the whole people. Where these imperial appointees, with the assistance of the counts of the provinces, found themselves unable to adjust a difficulty or render justice with regard to it, they were directed to refer it, with their reports, to the Emperor's court. All the people of the empire were exhorted

[1] Until 1806.

to live together according to the precept of God, in a just manner, under just judgment, in mutual charity and perfect peace. Every male citizen, layman and ecclesiastic alike, down to those under twelve years of age, was required to take the oath of allegiance to the Emperor. Charlemagne declared that he himself, after God and His saints, had been constituted the protector and defender of the holy churches of God, of widows, of orphans, and of strangers. He commanded that judges should judge justly, according to the written law, and not according to their own judgment.[1] This first great Emperor of the new régime brought together under his authority and government the territory now included in Germany, Hungary, Switzerland, France, Belgium, and all of Italy except the southern part.[2]

The old had passed away. There was now an Emperor of the West and an Emperor of the East. There was a Church of the West and a Church of the East. For the purposes of this study we turn our attention exclusively to the West. Charlemagne here regulated by his capitularies the administration and discipline of the

[1] *Mon. Germ. Hist.*, LL. II., pp. 91–99. Henderson: *Select Historical Documents of the Middle Ages*, p. 189 *et seq.*

[2] Wilson: *The State*, p. 181.

Church,[1] interfering even in questions of doctrine. He convoked synods, and they in turn acknowledged his ecclesiastical supremacy and presented their decrees for his confirmation. He appointed and deposed bishops. Pope Eugene II and the Romans were compelled to promise that no pope should receive consecration in future until he had taken, before the imperial ambassador, the oath of allegiance to the Emperor as his lord and suzerain.

In this continental contest for supremacy, waged for centuries, between the papal power on the one hand and various civil governments on the other hand, the so-called pseudo-decretals of Isidore[2] exerted a far-reaching influence. Originating probably not in Rome but certainly on behalf of Rome, they were designed to strengthen the hands of the pope against the civil power by aiming to prove that all bishops derive their authority from the Bishop of Rome, who holds his own immediately from Christ. They belong to the late Carlovingian period,[3] and aimed at no less a project than the overthrow of the existing con-

[1] Geffcken: *Church and State*, i., 176. Prall: *The State and the Church*, p. 158.

[2] D'Aubigne: *History of the Reformation of the Sixteenth Century*, i., 45.

[3] Schoenfeld: *German Historical Prose*, p. 67, note 2.

stitution of the church, which everywhere still essentially rested on the authority of the metropolitan. They sought to place the entire church in immediate subjection to the pope of Rome, and to establish a unity of the spiritual power, which would lead to its emancipation from the temporal.[1]

Centuries before, St. Augustine's *De Civitate Dei* had presented the *civitas terrena* (kingdom or city of the world) in contrast with the *civitas Dei* (kingdom or city of God); but the Roman canonists transformed his glorious vision of the kingdom of God into that kingdom of the world which he reprobated; and his ideal kingdom of God became a temporal kingdom, with all the accompaniments of conquest, fraud, and violence which, according to the great theologians of the West, naturally belonged to such an organisation. Augustine's ideal city, or kingdom of God, continued for centuries, during the earlier Middle Ages, to attract the attention and delight the heart of the faithful, as they contemplated the visible ecclesiastical Empire of Rome.[2] "No good Catholic Christian doubted that in spiritual things the clergy were the divinely-appointed superiors of the laity, that this power proceeded from the right of the priests

[1] Ranke: *History of the Reformation in Germany*, i., 9.
[2] Lindsay: *A History of the Reformation*, i., 3.

to celebrate the sacraments, that the pope was the real possessor of this power, and was far superior to all secular authority. The question, however, as to the pope's power to rule was certainly a subject of controversy." [1]

As early as the year 829, episcopal utterances about church and state asserted the principle *universalis sancta ecclesia Dei unum corpus manifeste esse credatur eiusque caput Christus;* and from this time forward mankind is commonly presented as one body with a God-willed spiritual and temporal constitution.[2] It was this claim on the part of the Roman Church and its acceptance by the world that forced Emperor Henry IV to Canossa, there to stand for three days outside the palace, barefoot, in the depth of winter,[3] until Pope Gregory VII chose to receive and grudgingly pardon him. This pope declared the clergy independent of the civil power and without its jurisdiction. They were to pay taxes to the church only, and were subject to no authority but that of the pope. Gregory was the first to renew the teaching of St. Augustine that the temporal power is the work of sin and the devil.

[1] Harnack: *History of Dogma*, vi., 132, note.

[2] Gierke: *Political Theories of the Middle Age*, p. 103.

[3] Prescott: *Robertson's History of the Reign of the Emperor Charles* V, i., 205.

He asserted the right of papal appointment of kaisers and kings, and charged all men, whom he had confirmed *in regia dignitate*, to obey him. The bearer of the keys must judge temporal rulers, but he himself can be judged by none.[1] In the collection of capitularies of Benedictus Levita, the principle is prominently set forth that no constitution in the world is of any force or validity against the decisions of the popes of Rome. Kings acting in opposition to this principle are threatened with divine punishment.[2]

One of the documents found among the pseudo-Isidorian decretals, known as the Constantine Donation,[3] purports to be a grant from Constantine to the pope of imperial honours, and of the primacy over Antioch, Alexandria, Constantinople, and Jerusalem, as also over all other churches in the world. It makes him the chief judge of the clergy, and tenders him the imperial diadem, granting him dominion over all Italy, including Rome, though under the terms employed—*Italiæ seu occidentalium regionum*,—later popes claimed nothing

[1] Gierke: *Political Theories of the Middle Age*, pp. 109, 117. Stubbs: *Constitutional History of England*, iii., 291, 292. Sidgwick: *The Development of European Polity*, p. 226 *et seq.*

[2] *Benedicti Capitularia*, lib. ii., p. 322, and lib. iii., p. 346. Ranke: *History of the Reformation in Germany*, i., 11.

[3] Henderson: *Select Historical Documents of the Middle Ages*, pp. 269, 270, 319.

less than all Western Europe. Though the authenticity of this document was questioned, and occasionally denied, even in the Middle Ages, it was received into various collections of canon law. It was seriously attacked, however, in the fifteenth century and its falseness finally recognised by historians generally. Adrian IV relied on it, according to John of Salisbury, in asserting the right to dispose of Ireland in 1155. In the bull conferring upon Henry II of England the right to conquer Ireland, Adrian says[1]: "There is indeed no doubt, as thy Highness doth also acknowledge, that Ireland and all other islands which Christ the Sun of Righteousness has illumined, and which have received the doctrines of the Christian faith, belong to the jurisdiction of St. Peter and of the Holy Roman Church." He gives his assent to the king's petition, and expresses his pleasure that the king, "for the enlargement of the bounds of the church, for the restraint of vice, for the correction of morals and the introduction of virtues, for the advancement of the Christian religion," should enter that island. It is further provided that

[1] Henderson: *Select Historical Documents of the Middle Ages*, pp. 10, 11. Berington: *The History of the Reign of Henry* II, i., 306, 307. Scholars are not fully agreed as to the genuineness of this papal bull.

the rights of the church remain inviolate and entire; and there is reserved to St. Peter and the Holy Roman Church the annual pension of one penny from each and every house on the island.

In the beginning of the following century, at a time when Aragon and Hungary were papal fiefs and the Latin East was entirely subject to the Pope, King John of England, in 1213, after a losing struggle with Pope Innocent, laid his realm at the feet of the Pope's legate, to receive it back as a fief from Rome. In his grant he decrees the concession of the kingdoms of England and Ireland with all their "rights and appurtenances" to God and His holy Apostles, Peter and Paul, and to our mother the Holy Roman Church, and to our Lord Pope Innocent and to his Catholic successors, for the remission of our sins and of those of our whole race, as well for the living as for the dead; and now receiving and holding them, as it were a vassal, from God and the Roman Church, we perform and swear fealty for them to him our aforesaid Lord Pope Innocent, and his Catholic successors and the Roman Church. The concession further declares that the Roman Church shall receive annually, for all the service and customs which ought to be rendered it, saving in all things the penny of St. Peter, a thousand marks sterling, seven hun-

dred namely for the kingdom of England and three hundred for the kingdom of Ireland. The king asserts that the transfer was not induced by force or compelled by fear, but of his own good and spontaneous will and by the common counsel of his barons.[1] Though there was a sense of national shame in later ages over this settlement of the difficulties in which the king and the kingdom were involved, "we see little trace of such a feeling in the contemporary accounts of the time."[2]

Having deposed one emperor and claiming the right to appoint his successor, Innocent IV wrote to the German princes in 1246: "We command you, since our beloved son, the Landgrave of Thuringia, is ready to take upon himself the office of emperor, that you proceed to elect him unanimously without delay."[3]

There are two writers of this period, of lasting renown, to whom reference must be made, the one a defender of the papal claims and the other an opponent. Thomas Aquinas sought to show that submission to the Roman pontiff is necessary for every human being. He asserted that under

[1] Henderson: *Select Historical Documents of the Middle Ages*, pp. 359, 430. Stubbs: *Constitutional History of England*, i., 522.

[2] Green: *A Short History of the English People*, i., 236.

[3] Ranke: *History of the Reformation in Germany*, i., 40.

the teachings of the New Testament, the king is subject to the priest in so far that if a king prove to be a heretic or a schismatic, the pope has a right to deprive him of all royal authority by releasing his subjects from their allegiance.[1] Aquinas teaches the principle of unity before plurality, and employs the maxim *omnis multitudo derivatur ab uno*. He sees the "prototypes of the state in the world with its one God, in the microcosm of man with its single soul, in the unifying principle which prevails among the powers of the soul, and which prevails also in the natural body and in the animal kingdom." The church has the care of the ultimate end; civil rulers have merely the care of antecedent ends.[2]

Dante holds the principle of unity to be the source of all good; and bases his demand for a single rule in every whole on the types of an *ordinatio ad unum*, as found in the world-whole, among the heavenly bodies, and everywhere on earth.[3] To accomplish the common purposes

[1] Compare his *Opuscula contra errores Græcorum; De regimine principum.* Lindsay: *A History of the Reformation*, i., 4.

[2] Gierke: *Political Theories of the Middle Age*, pp. 101, 111. See *De regimine principum*, i., 2, 3, 12, 14; also *Summa contra gentil.*, iii., q. 81.

[3] Dante: *Monarchia*, i., 5–16. Gierke: *Political Theories of the Middle Age*, p. 102.

of the race, nothing but a world empire will suffice. He argued that a universal monarch, with no rival to fear and no further ambition to satisfy, could have no motive for ruling otherwise than wisely and just. He expressly adopted Aristotle's doctrine that the merit of a government must be gauged by its promotion of the welfare of all its subjects. The aim of the rightful commonwealth is liberty, *i. e.*, that men may live for their own sake. Citizens are not for the sake of the consuls; a nation is not for the king. On the contrary, the consuls are for the sake of the citizens and the king is for the sake of the nation. The state is not subordinate to laws, but laws to the state. The monarch is to be deemed the servant of all.[1] The monarch Dante had in mind, it must be noted, is not a world despot, but a ruler set over the princes of various states to keep the peace between them. He puts imperial sovereignty in the place of papal supremacy.[2]

Pope Boniface, in 1296, issued the bull *Clericis Laicos*, in which he declares antiquity teaches us that laymen are in a high degree hostile to the clergy, a fact further established "by the experiences of the present times," referring here

[1] Pollock: *An Introduction to the History of the Science of Politics*, pp. 37, 38.

[2] Bullowa: *The History of the Theory of Sovereignty*, p. 21.

to the taxes imposed upon the clergy of France and England by their respective kings. The Pope says they do not have the prudence to consider that all jurisdiction is denied them over the clergy —over both the persons and the property of ecclesiastics. He therefore decrees that any prelates or ecclesiastics, monastic or secular, who may pay or agree to pay to laymen any such levies or taxes, under whatever name or pretence, without permission of the Apostolic Chair; and any emperors, kings, princes, barons, or other persons, by whatever name called, wherever situated, who shall impose or receive such payments or take any action concerning them, publicly or secretly, without such permission, shall incur, by the act itself, the sentence of excommunication. Corporations guilty in these matters are placed under the ecclesiastical interdict. Prelates and all ecclesiastics acquiescing in any such demands, herein forbidden, are subject to deposition and excommunication.[1] The King of England obeyed this mandate, but the King of France did not. Thereupon began a conflict that led eventually and indirectly to the Babylonian Captivity.

[1] Henderson: *Select Historical Documents of the Middle Ages*, pp. 359, 432 *et seq.* Robinson: *Translations and Reprints from the Original Sources of European History*, iii., 6, pp. 23–25.

Towards the close of this struggle between Boniface VIII and Philip, the pope issued another bull, known as the *Unam Sanctam*,[1] published in 1302, in which he declared that there is neither salvation nor remission of sins outside of the one Holy Catholic and Apostolic Church. The Lord says in John that there is one fold, one shepherd, and one only. We are told by the word of the Gospel that in this His fold there are two swords —a spiritual and a temporal. Surely he who denies that the temporal sword is in the power of Peter wrongly interprets the word of the Lord when He says: "Put up thy sword in its scabbard." Both swords, the spiritual and the material, therefore, are in the power of the church, the one, indeed, to be wielded for the church, the other by the church: the one by the hand of the priest, the other by the hand of kings and knights, but at the will and sufferance of the priest. One sword, moreover, ought to be under the other, and the temporal authority subject to the spiritual. For when the Apostle says, "There is no power but of God, and the powers that are of God are ordained," they would not be ordained

[1] Henderson: *Select Historical Documents of the Middle Ages*, pp. 359, 435. Robinson: *Translations and Reprints from the Original Sources of European History*, iii., 6, pp. 20–23.

unless sword were under sword and the lesser one, as it were, were led by the other to great deeds. That the spiritual exceeds any earthly power in dignity and nobility we ought the more openly to confess, as spiritual interests excel temporal ones in importance. We see this, too, in the giving of tithes, in the benediction and the sanctification; from the recognition of this power and the control of these same things. For, the truth bearing witness, it is for the spiritual power to establish the earthly power and judge it, if it be not good. The spiritual man judges in all things, but he himself is judged by no one. Indeed, we declare, announce and define that it is altogether necessary to salvation for every human creature to be subject to the Roman Pontiff.

Alvarius Pelagius, writing from 1330 to 1340, maintained that as the church, which is *cosmopolis*, can give, by baptism, and take away the right of citizenship, so she has the right to distribute offices among her citizens. The priestly acts of sacerdotal consecration and unction, which first give temporal authority over God's people, must be regarded as approval and confirmation.[1]

Pope John XXII, of this same period, claimed the right of looking into the merits of an emperor-

[1] Gierke: *Political Theories of the Middle Age*, p. 113.

elect, and of rejecting him if he saw proper. In the case of a disputed election, he asserted the right to administer the government himself until the contest should be settled.[1] In connection with this dispute between Louis the Bavarian and the pope—one of the last great mediæval struggles between the empire and the papacy—and as a reply to these papal claims, the German princes, assembled in the Imperial Diet held at Frankfort in 1338, passed the famous *Licet Juris*.[2] In this decree, the electors stoutly and unequivocally declare the independent rights and powers of the Emperor, as over against those of the pope. They thus take issue with the claims and declarations of various popes during the preceding centuries. They maintain that the testimony of both civil and canon law manifestly proves that the imperial dignity and power proceeded from of old directly through the Son of God, and that God openly gave laws to the human race through the emperor and the kings of the world; and since the emperor is made true emperor by the election alone of those to whom it pertains, he does not

[1] Ranke: *History of the Reformation in Germany*, i., 45.

[2] Henderson: *Select Historical Documents of the Middle Ages*, pp. 360, 437. Robinson: *Translations and Reprints from the Original Sources of European History*, iii., 6, pp. 25, 26.

need the confirmation or approbation of any one else. He has no superior on earth as to temporal things, and peoples and nations are subject to him. Our Lord Jesus Christ Himself ordered men to render unto God the things that are God's and unto Cæsar the things that are Cæsar's. We declare, by the counsel and consent of the electors and of the other princes of the empire, that the imperial dignity and power come directly from God alone, and that by the old and approved right and custom of the empire, after any one is chosen emperor or king by the electors of the empire, unanimously or by majority vote, he is at once, in consequence of such election alone, to be considered and regarded by all as the true and lawful king and emperor of the Romans, and he should be obeyed by all the subjects of the empire; and he shall have and be considered and firmly asserted by all to have and to hold the imperial administration and jurisdiction and the plenitude of the imperial power. He does not need the approbation, confirmation, authority, or consent of the Apostolic See or of any one else. To hold, assert, or act otherwise is declared to be high treason, subject to all its penalties, in addition to the loss of all fiefs, favours, jurisdictions, privileges, and immunities granted or held from the empire. The law further denies and declares

false the assertion that the imperial dignity and power come from the pope and that he who is elected emperor is not true emperor or king unless and until he be confirmed and crowned by or through the pope or the Apostolic See.

The electors saw clearly that their claim of the right to elect the emperor was at stake in the pope's claim of the right to depose the emperor. This and the succeeding popes, however, did not abate their claims to universal sovereignty. They were asserted during the exile at Avignon and in the time of the Great Schism. Alexander VI, in the bull *Inter Cætera Divinæ*, of May 4, 1493, acting as head of the universe, made over the new world, by legal deed of gift, to Isabella of Castile and Ferdinand of Aragon; and Pope Leo X, in the bull *Pastor Æternus*, of 1516—just the year before Martin Luther nailed his ninety-five theses on the church door at Wittenberg—asserted the same claims to universal sovereignty as contained in the *Unam Sanctam*.[1]

Marsilius of Padua, writing in the early part of the fourteenth century, stood practically alone in the Middle Ages in teaching the principle of the complete absorption of church in state. Church property is state property. Church offices are offices of state. The government of the church

[1] Lindsay: *A History of the Reformation*, i., 4, 5.

is a part of the government of the state. Like others, Marsilius reached conclusions from the idea of unity, but in his case this idea was already "transmuting itself into the 'antique-modern' idea of an all-comprehending internal unity of the state and was proclaiming in advance those principles of the state's absoluteness which would only attain maturity in a then distant future."[1] He denied to the pope any right of examining an election.[2] He would have the temporal laws and magistrates make no difference of persons on the score of position or religious opinion. He clearly distinguished between the executive and the legislative powers of government, and advocated a complete separation of temporal from spiritual authority. Indirectly, he noted the difference between state and government. He denied to the church any coercion of conscience, even in spiritual matters; and suggested the framing of laws by duly elected representatives.[3] It is in his views as to the organisation and powers of political and ecclesiastical societies that he sounds a new note. He draws largely from Aristotle as

[1] Gierke: *Political Theories of the Middle Age*, pp. 16, 94, 120, 191.

[2] Marsilius: *Defensor Pacis*, ii., 26.

[3] Pollock: *An Introduction to the History of the Science of Politics*, p. 41.

to the origin and object of civil government. He says, too, that, according to truth and the opinion of Aristotle, the legislator is the people, or the majority of them, commanding or determining that something be done or refrained from in the field of social human action, under pain of some temporal punishment.[1] In the church, as well as in the state, he believes in popular sovereignty. The sovereign ecclesiastical community is identical with the political assembly of the citizens.[2] Indeed the treatise *Defensor Pacis*, in the writing of which Marsilius had an associate, presents a theory of church and state "in many respects out of all relation to the current of mediæval thought and accords with the full spirit of the Reformation and the Revolution. . . . In general, his whole attitude toward the historical development and the dogmatic supports of the Roman church is precisely that which was assumed by the protestants after the Lutheran revolt."[3] The government, according to his view, is established to maintain peace, and the state exists to render a higher life possible.[4] The power of the king proceeds from his election—for a people must

[1] *Defensor Pacis*, i., 12.

[2] Gierke: *Political Theories of the Middle Age*, p. 95.

[3] Dunning: *Political Theories Ancient and Mediæval*, pp. 238, 244.

[4] *Defensor Pacis*, i., 1.

choose a ruler; and he is in no respect absolute, but subject both to the laws and to the final judgment of the popular will.[1] Denying the pre-eminence of the Roman See, even in spiritual matters, Marsilius suffered excommunication.[2]

In the writings of William of Ockham, largely in the form of disputations, it is difficult to discover his own personal views as distinct from those of the persons he introduces into the discussions. The influence of Aristotle, Dante, and Marsilius is in evidence. He makes it the characteristic mark of the royal monarchy that the ruler, though free from all restraint of human law, is nevertheless subject to the law of nature. The general functions of the state are legislation, the maintenance of justice, and the promotion of virtue, but the punishment of offenders is the chief function.[3] The coercive authority must be in the prince. The emperor, and the same is true of any other ruler, is not unlimited in authority, even in temporal matters. He is subject to the provision that his government be just and useful to the people.[4] Ockham goes so far as to

[1] Bullowa: *The History of the Theory of Sovereignty*, p. 22.
[2] Pollock: *An Introduction to the History of the Science of Politics*, p. 41. [3] Ockham: *Octo Quæstiones*, iii., 6.
[4] Dunning: *Political Theories Ancient and Mediæval*, pp. 244–248.

hold that, if there were to be but one state for the entire world, with a single head, then this head must be the emperor, and the church can be nothing more than a part of his realm.[1] Marsilius had suggested that the world of Christian believers be so represented that each province or community have delegates according to the "number and quality" of its inhabitants; but Ockham presents the idea of all the believers of a parish or community choosing delegates to an electoral assembly for the diocese or other given district, and delegates to a representative general council could then be chosen by these assemblies.[2] He assumed the right of every people, every community, and every corporation (*corpus*) to legislate under certain circumstances for itself.[3] Wycliffe and Huss pointedly demanded that the church should not be conceived as a temporal state, but in a more internal manner, as the community of the predestinated.[4]

Nicholas of Cusa asserted that it was impossible to improve the church without reforming the empire. He recommended, therefore, the separation and emancipation of civil government. The

[1] Gierke: *Political Theories of the Middle Age*, p. 16.
[2] Ockham: *Dialogus* I., vi. 84.
[3] Dunning: *Political Theories Ancient and Mediæval*, p. 252.
[4] Gierke: *Political Theories of the Middle Age*, p. 19.

jurisdiction of spiritual and temporal courts respectively should be clearly defined. He presented a plan for superior courts of justice, whose assessors should be chosen from the nobles, the clergy and citizens, with power to hear appeals from inferior courts, and also to hear and decide cases between princes in the first instance. He recommended annual meetings of the Imperial Diet for the proper development and maintenance of the authority, unity and strength of the realm. This body should settle differences and pass general laws for the empire, which every member should sign, seal, and observe. No ecclesiastic, he contended, should be exempted from their operation. He deemed a standing army a necessity, in order to maintain order and punish the lawless. He suggested that the state might retain for its own use, as determined by the Diet, a percentage of the numerous tolls granted to individuals.[1]

He asserted, too, as a principle of divine and natural right, that the acceptance of those to whom it applies is the basis for the validity of every law, and that general consent is the sole source of obligation. Since all men are by nature free, all government, whether in the form of written

[1] *De Concordantia Catholica*, iii., 133. Ranke: *History of the Reformation in Germany*, i., 111–113.

law or of a ruler's will, springs solely from the consent of the subjects. Since all men are by nature equally endowed with power, the superior position of any one can be due only to the choice and consent of the rest.[1] Nicholas of Cusa advances beyond his predecessors in applying these principles, which were already familiar to writers on morality and private law, to public law. He does not apply his theories, however, to the secular state of his day, as one might expect. The choice of the imperial electors is viewed as the choice of the people, and the Imperial Diet is the council representing the popular consent.[2] There is no suggestion in his writings of the popular choice of particular representatives, based on territory and population.[3]

To Machiavelli—standing "on the threshold of political science"[4] the state is the highest kind of existence. It is neither a moral nor a legal, but a purely political institution. Utility is the standard of its action. What is injurious to its welfare must be avoided. Like ancient writers, Machiavelli aims at the welfare of the state

[1] *De Concordantia Catholica*, ii., 12, 14.

[2] *Ibid.*, iii., 4, 25.

[3] Dunning: *Political Theories Ancient and Mediæval*, pp. 273–276.

[4] Pollock: *An Introduction to the History of the Science of Politics*, p. 46.

per se rather than the welfare of its citizens. His "great service was to make political science independent of theology, and to have discovered the distinction between public law (*Statsrecht*) and politics (*Politik*)."[1]

[1] Bluntschli: *The Theory of the State*, pp. 61, 62.

CHAPTER II

THE GERMANY OF LUTHER'S DAY

AT the close of the fifteenth and the dawn of the sixteenth centuries the Holy Roman Empire was little more than a German power.[1] It was composed of a number of virtually sovereign states, principalities, and free cities—each with its own diet, representative assembly, senate, or council; each with its elector, prince, or mayor —at the head of all of which was an emperor,[2]

[1] Bryce: *The Holy Roman Empire*, pp. 364, 365.

[2] "During all the earlier years of the empire, while an election and crowning in Germany entitled the person thus crowned to become emperor, he was not considered emperor nor allowed to assume that title, until he had made a journey to Italy and been crowned by the pope. In one or two instances this formality was dispensed with, and the pope gave his consent for the king to assume the title of emperor and to exercise imperial authority without being crowned. It was the common practice for the electors, during the life of the emperor, to choose his successor, who on the death of the emperor was entitled immediately, on taking the proper steps, to succeed him. Until the death of the emperor, and, indeed, until his crowning by the pope, he was known after his election and crowning as such, as King of the Romans." Case: *European Constitutional History*, pp. 111, 112.

chosen for life by the electoral rulers within the bounds of the empire, with an Imperial Diet composed of various representatives from all parts of the empire. The imperial revenues, so far as the emperor personally was concerned, were not more than those of a wealthy individual; and the empire's hold on outlying districts was so weak that it is difficult to tell whether some such lands belonged to it or not. Switzerland, rather than pay Maximilian the imperial tax, secured its freedom with the sword. Italy was practically lost in the Hohenstaufen period. The emperors were stripped of almost all their territorial property, and were left without a single city or a single castle belonging to them as emperors.[1]

Among the powers belonging exclusively and solely to the emperor were the right to represent the empire in dealing with foreign nations, to veto measures submitted by the Imperial Diet, to appoint and regulate the Imperial Aulic Council and fill certain seats in the Imperial Chamber, to grant the privileges *de non evocando* and *de non appellando*, to grant royal fiefs—but not lapsed ones; to make promotions in rank, to grant titles of nobility, and confer university degrees.[2]

[1] Prescott; *Robertson's History of the Reign of the Emperor Charles V*, i., 211.

[2] Turner: *A Sketch of the Germanic Constitution*, p. 126.

One of the most important documents determining the rights and privileges of the German people as they existed at the beginning of the sixteenth century was the Golden Bull,[1] issued by Charles IV in 1356 as a fundamental law of the empire. It determined the procedure for the election and coronation of the emperor. It designated the imperial electors—seven in number—four of whom were secular and three ecclesiastical princes. The election was to be held at Frankfort, and a majority of votes was sufficient to elect. It regulated the rights, duties, privileges, and prerogatives of the electors, giving them virtually sovereign rights in their respective territories, and these territories could not be subdivided or alienated. Each elector, in his own district, was given the so-called regalia, *i.e.*, the ownership of mines of gold, silver, and other metals, the right of coinage, the taxes on the Jews, and the tolls which had been previously assigned. Conspiracy against the electors was declared high treason to be punished with death by the sword, as well as confiscation of property. The electors were granted the important privileges

[1] Turner: *A Sketch of the Germanic Constitution*, p. 98 *et seq.* Henderson: *Select Historical Documents of the Middle Ages*, pp. 174, 220. Bryce: *The Holy Roman Empire*, p. 243. Janssen: *History of the German People*, ii., 122.

known as the *privilegium de non evocando* and the *privilegium de non appellando*. Under the former provision, the subjects of any territory belonging to an elector might be tried only in the courts of that particular elector's territory, and cases in such courts could not be carried to any other courts. Under the latter provision, appeal would not lie from the territorial courts to the imperial courts. The sole exception to this rule was in case of delay in or denial of justice. Another provision in this historic law was that the subjects of princes, seeking to gain citizenship in the cities solely in order to gain protection against their former lords would not be permitted to do so. In *bona fide* cases where such subjects actually took up their domicile in the city and submitted to their due burdens and municipal obligations, they would not be disturbed.[1] In case of vacancy on the throne, the count palatine and the Elector of Saxony were to administer the affairs of the empire. It was further provided that the electors should meet annually to consider the affairs of the empire, though this provision was not carried out.

For a hundred years prior to the beginning of

[1] In spite of these provisions, and despite all opposition, the institution of the Pfahlbürger continued. Turner: *A Sketch of the Germanic Constitution*, p. 115.

Luther's public life, the constitutional and political condition of Germany was determined by and dependent on the periodical Imperial Diets,[1] which exercised rights and powers not always, if ever, accurately defined. They declared war and peace, levied taxes, and exercised a certain supervision over the general affairs of the empire. The emperor and the electors appeared in person, as well as the other princes, the counts and lords or their representatives, and the deputies from the cities. At the beginning of the sixteenth century, the diet was made up of three colleges,—electors, princes, and representatives from the cities. The lesser nobility and the knights were not represented.[2] These colleges deliberated separately. The answer was drawn up by the Electoral College and presented to the others for acceptance.[3] The college of deputies from the cities could prevent the passage of a measure, but in this age it had no vote on the final determination of any matter,[4]—the two upper colleges maintaining for years that the representatives of the cities were summoned only for consultation.[5] After

[1] Ranke: *History of the Reformation in Germany*, i., vii.
[2] Bryce: *The Holy Roman Empire*, p. 367.
[3] Ranke: *History of the Reformation in Germany*, i., 97.
[4] Case: *European Constitutional History*, p. 118.
[5] Turner: *Sketch of the Germanic Constitution*, p. 132.

passage by these two colleges, each measure went to the emperor for his assent, and then became law. In the final decision of any question before them, the colleges of electors and princes sat and voted together as one body. The unity of the nation was represented by these Imperial Diets. Their consent was necessary to all important public acts. They exercised certain judicial, as well as deliberative and legislative powers. Questions came before them affecting princes, and many other matters submitted to the emperor on which he could not act alone. The various states of the empire, in like manner, possessed their own provincial or territorial diets or *Landtage*. Their membership differed; but it was composed, in the larger territories, of prelates, counts, barons, knights, and representatives of the cities.[1] They were presided over by their respective princes, and each prince was, in most matters, within his own territory, virtually supreme. State taxes could not be imposed without the consent of the *Landtage*, just as imperial taxes could not be levied without the consent of the Imperial Diet. The *Landtage* legislated, with the concurrence of the prince, on all matters connected with their peoples and territories, excepting only those belonging to the

[1] Turner: *Sketch of the Germanic Constitution*, p. 104.

Imperial Diet. They sometimes decided a disputed succession to the dukedom or other post, but such a matter was usually considered as belonging to the jurisdiction of the emperor.[1] As a rule, territorial princes presided over the law courts in their respective jurisdictions.

After suffering from feuds, private wars, and personal disputes for as much as a thousand years a measure known as the Perpetual National Peace (*Der Ewige Landfriede*) was passed by the Imperial Diet held by Maximilian in the city of Worms in 1495. Notwithstanding Germany's great need of order, security, and peace, this law was passed only after fourteen weeks' earnest discussion, and in spite of the opposition of many of the princes and nearly all the nobility. All such disputes thereafter were to be referred to an imperial court, permanently established at Frankfort, to be composed of a president and sixteen councillors or assessors. This was the first permanent imperial law court in Germany, not dependent upon the movements of the emperor from city to city. Maximilian agreed that the statute law should be in force in this supreme court and that no more than the regular fees should be exacted. More than this, he granted to the court the office of proclaiming the ban of the

[1] Case: *European Constitutional History*, pp. 120, 121.

empire in his name. He yielded to the estates the appointments to this bench, except in the case of the president (*Kammerrichter*), who was to be nominated by the emperor himself. The estates appointed the assessors, but the cities were asked to propose certain candidates for this office. A committee examined and decided on the presentations. By this legislation, the character of the imperial court entirely changes. Formerly a monarchical institution, it now becomes dependent, in a measure, on the estates of the realm.[1] In civil and criminal matters it was given original jurisdiction in cases affecting parties holding immediately of the emperor, and appellate jurisdiction in private cases where denial of or delay in justice was shown in the territorial courts, in cases appealed from courts in territories not possessing the *privilegium de non appellando*, and in disputes between different states of the empire, including appeals from the awards of arbitrators between states.[2]

At this same Diet, the Emperor's concession was met by a corresponding concession from the estates.[3] They allowed the grant of the "common

[1] Ranke: *History of the Reformation in Germany*, i., 122.

[2] Case: *European Constitutional History*, p. 123.

[3] Ranke: *History of the Reformation in Germany*, i., 122–124.

penny,"[1]—a tax of one gulden on every thousand, and half a gulden on every five hundred. Among persons of slender means, every twenty-four above fifteen years of age, without exception, male and female, ecclesiastic and layman, were to contribute one gulden. The more wealthy classes were required to pay according to their own estimate of their property. The people were to be urged by the priests from the pulpit to give more than this amount. While the plan was imperfect, and somewhat confused with charity, it was nevertheless a systematic attempt at a general imperial tax for the purposes of peace as well as war, including the support of the newly established imperial court or chamber. The choice of the imperial treasurer was left to the estates. This official was to turn over the revenue received from these taxes to the Diet, and this body was given exclusive control over them. But all these splendid plans, poorly executed at best, were short-lived.

The estates claimed the right, as a diet, of

[1] The common penny, a combination of general property and poll tax, had been voted by the Diet at long intervals, beginning with the year 1427, but it had never been systematically collected, and furthermore the knights had absolutely refused to pay it. "It was voted for the last time in 1495, and soon thereafter abandoned as impracticable."—Turner: *A Sketch of the Germanic Constitution*, p. 112.

giving or withholding their consent to a declaration of war. They held that every conquest was to accrue to the empire. Maximilian rejected as an assault upon his prerogatives a proposition to establish a council of state,[1] with power, in certain cases, to act in the Emperor's name. The Diet of Augsburg, in 1500, however, so strongly urged the necessity of a permanent imperial council which might relieve the Emperor and the estates from constant meeting of diets, and to whose energy and care the execution of the Diet's edicts might be entrusted, that Maximilian was forced to submit. The council of administration thus authorised was to consist of representatives of the three several colleges of the Diet. The Emperor was given the right to preside in person or by his representative. To this council were given most important powers, including everything regarding the administration of justice, the maintenance of the public peace, protection of the country against aggression or assault, and the regulation of affairs both domestic and foreign. It was empowered "to originate, to discuss, to determine." Having this authority, it was also given the suggestive title *Reichsregiment* (government of the empire, or council of administra-

[1] *Reichsregiment.*

tion).[1] This institution, however, proved unsatisfactory to the Emperor and to the estates alike, though for different reasons, and continued in existence but two years.[2] We are told that already in 1502 this council and the assessors of the imperial chamber dispersed to their homes, neither having been paid their salaries, nor permitted to exercise their functions. Maximilian then proceeded to set up and preside over an imperial court of justice similar to the one his father had maintained, with assessors arbitrarily appointed.[3] To this court he referred matters pertaining to his own territories and other cases coming before him as Emperor. In addition to its exclusive jurisdiction in feudal and certain other cases, this court, designed to strengthen the imperial prerogative, was given appellate jurisdiction co-ordinate with the imperial chamber.[4] The estates earnestly and resolutely opposed Maximilian's plans to extend his imperial prerogatives in this and other ways.

The early years of the sixteenth century marked

[1] Ranke: *History of the Reformation in Germany*, i., 155, 156. This council of administration was again instituted in 1521, but continued only a decade.

[2] Mr. James Bryce says that Maximilian did his best to ensure its failure.—*Holy Roman Empire*, p. 366.

[3] Ranke: *History of the Reformation in Germany*, i., 159, 160.

[4] Case: *European Constitutional History*, p. 123.

many a contest between the Emperor and the estates. Maximilian was in urgent need of war subsidies, but the Diet held at Worms in 1509 declared its members were neither able nor bound to support him in his war beyond the imperial territory. They unanimously declared themselves ready to consider any propositions presented to them concerning law and order, the administration of justice, or coinage. They recognised the needs of their own people and their own country as of prime importance, demanding first consideration. They sought a more clearly defined representative government that would maintain the dignity, and yet limit the arbitrary power, of the emperor. They endeavoured to introduce system and uniformity into the military, financial, and legal administration of the empire, even at the expense of the authority and prerogatives of the territorial rulers.[1]

Many earnest attempts were thus made to establish a stronger, more systematic, more uniform, and more representative form of government, but they invariably failed, in part, if not in whole. The proposed reforms of 1495, reluctantly assented to by Maximilian, suffered that fate. Those actually established were permitted to wither. The Imperial Chamber and Aulic Council

[1] Ranke: *History of the Reformation in Germany*, i., 203–206.

were both allowed to fall into disuse. The only reforms of permanent value were the *Landfriede*, or edict of perpetual national peace, and the division of the empire into circles or districts, both of which served, in a measure, as a counterpoise to the powers of the princes. This was all that remained of the various projects of reform from which so much had been fondly expected.

"So ended," says Mr. Bryce,[1] "the first great effort for German unity," an effort to establish a body which would resemble far more nearly the senate of a federal state than the administrative council which surrounds a monarch. These attempts to secure permanent imperial officials and uniform administration throughout the empire, to completely check private wars, and to put into satisfactory operation the proposed Imperial Chamber, however, were unsuccessful. The various princes and established powers framed new codes of law, introduced new administrative systems, and ruled more despotically than ever.

Looking now at the economic conditions in existence at the beginning of the sixteenth century, it will be remembered that the printing press and the use of movable type were invented half a century before this, and printing establishments were now scattered not only all over Ger-

[1] Bryce: *The Holy Roman Empire*, p. 367.

many but in all civilised Europe. "We Germans," wrote Wimpheling in 1507, "practically control the whole intellectual market of civilised Europe; the books, however, which we bring to this market are for the most part high-class works tending to the honour of God, the salvation of souls, and the civilisation of the people."

In certain parts of Germany, especially along the middle Rhine, there were village schools; in some cases, girls' schools. The larger towns, in addition to the elementary grades, had higher schools. All these schools were closely connected with the church and were under the supervision of the clergy. They were supported by the church, by fees, and by legacies. The home and the school alike were to co-operate with the church in the instruction of God's word and the teachings of the church. Aside from the teaching given under and for the church,—generally in the parish schools,—there was no such thing as popular or compulsory education.[1] Taxes or rates for the support of schools were then unknown.[2] Special schools were provided for the nobility.

The historian Janssen asserts that at no other period of German history have the universities

[1] Janssen: *History of the German People at the Close of the Middle Ages*, i., 25 *et seq.*

[2] *Ibid.*, i., 81.

ever had such enthusiastic and self-sacrificing support lavished on them as in the fifty years from 1460 to 1510, and that at no other period have they ever made such tremendous strides in the way of progress. They were designed to be not only the highest schools of secular, but also of religious, learning. "They were to serve for the protection and propagation of the faith." Hence the charters of all the earlier and most of the later ones were granted by the pope. "From the nature of their constitution the universities were recognised as ecclesiastical authorities. Their whole organisation was permeated with the clerical spirit."[1]

At the close of the Middle Ages most of the soil belonged to the princes, the feudal lords, and the cities, with a very large share in the possession of the church. Farmers and house tenants, as they were called, paid rent or rendered stipulated service for their holdings. Under the Christian German law, there was no serfdom in that country in the fifteenth century—except among the peasants of Pomerania. The church proclaimed the old Swabian common law that no man belongs to another. The tenant, however, was bound to the land and could not leave his

[1] Janssen: *History of the German People at the Close of the Middle Ages*, i., 87.

holdings without the consent of the lord. Every man coming into such a possession was required to bind himself with an oath of allegiance to the lord of the soil. Day labourers and servants were better off than the peasants.

There was a marked change, however, in economic conditions, at the close of the fifteenth and the beginning of the sixteenth century. A large number of crop failures, the development of domestic and foreign commerce, the discovery of America and her gold, and the growing trade with the East Indies all contributed to a steady rise in the cost of living. The labourer's wage increased but little, sometimes it was materially decreased; while the cost of living rose by leaps and bounds. In the middle of the sixteenth century the workmen found that "the price of rye rose from six to twenty-four groschen per bushel, the price of a sheep from four to eighteen groschen, and so on with the other necessaries."[1] Indeed the wages of the sixteenth century "were only half what they had been between 1450 and 1500,"—a condition of things which likewise existed in England, France, and Italy. The position of the country peasant at the beginning of the sixteenth century has been described as one

[1] Janssen: *History of the German People at the Close of the Middle Ages*, i., 349.

of "extreme wretchedness." His land was mortgaged at high rates of interest, and the ensuing harvest was ofttimes pledged on account of a loan. Little, if anything, had been done, or even attempted, by the Imperial Diet to guard the agricultural population from the absolute tyranny of the landed nobility. Repeated efforts of the peasantry to better their condition invariably ended in crushing defeat and harsher treatment than before. The disaffection and dissatisfaction of peasants and labourers became alarming. When the Imperial Diet met at Mayence in 1517, complaints were heard on every side as to the inefficiency of the imperial court, the general disregard of law, the insecurity of the public roads, and the oppression of the helpless poor. The estates demanded a remedy of the Emperor.[1]

The progress of Germany at the close of the Middle Ages was much more marked in the field of manufacture than in agriculture. Industrial and commercial development was rapid. There were prosperous guilds of the various trades regulating many matters pertaining not only to their work itself, but also concerning their personal rights and privileges. The guild was subject to the town council and authorities and was obliged

[1] Lewis: *A History of Germany from the Earliest Times*, p. 310.

to submit its ordinances and regulations for approval. The guild controlled the purchase of the raw material for the work of its members. It regulated hours of labour, wages, conditions and amount of work, and the number of apprentices, in order to equalise profits, for it maintained that labour rights belonged to the organisation first and to the individual only as a member of that body. Prices, and times and places of selling the products of their labour were likewise fixed. There were inspectors of food stuffs, such as bread, flour, and fish, and also of wine and beer. The mining industries of the country were of great importance and yielded large returns.

Many documents of that age bear testimony to the luxury and extravagance in dress and food of all classes,—princes, merchants, artisans, and peasants alike. Germany's foreign commerce was extending all over Western and Southern Europe, and to America and the East Indies as well. Books were written and sermons preached against the spirit of the age in which no one was contented with his lot, and even the rustic aped the nobleman.

As the privilege of coinage had been accorded for centuries to small principalities and free cities, and Germany was flooded with a great number of different coinages, money-changers were a neces-

sity; but their work extended to loaning money, which was done in most cases at a high rate of interest.

Trading companies agreed upon the mutual exploitation and control of various lines of trade or business and divided the profits. Christopher Kuppner, Professor of Jurisprudence at the University of Leipsic, in his work on usury, in the year 1508, urges the magistrates to proceed against "those wealthy merchants or trading companies who have agents at Vienna, in Russia, and in Prussia, and who, when they learn that any particular article of trade has gone up in price, whether it be saffron, pepper, corn, or what not, instantly buy it all up to sell it again at whatever price they please. . . . Princes and rulers should not tolerate such dealings, and should be more careful for the general good of their subjects."[1] The Imperial Diet at Cologne, in 1512, took measures against the great trading companies whose object was to control the market to their own profit and the injury of the public; but the empire could not control the avaricious spirit. Furthermore, too, many councillors and princes were themselves members of such companies or received considerations from them; and these combinations and

[1] Janssen: *History of the German People at the Close of the Middle Ages*, ii., 82.

monopolies only increased in number and in power. Their profits were enormous. Trade and commerce developed an excessive greed for gain, and fostered extravagance in life.

Another factor of prime importance in the changes of the fifteenth and sixteenth centuries must be considered,—the introduction into Germany of the Roman law. The Christian German theory acknowledged justice as proceeding from God. Each province, each town, each village, and each calling or class of people had its own rights, privileges, and laws. There thus existed an endless confusion of laws and precedents differing in detail but all based on the same principles and conceptions of law. Every man was entitled to be judged by his peers—men of his own class. There was a public hearing and open discussion, with all parties interested present. There were no legal practitioners interested in cultivating or prolonging cases. Every man, though belonging to the poorest and the lowest class, was sure of fair and speedy trial in the open.

But the close of the fifteenth and the opening of the sixteenth centuries saw the gradual and steady introduction into the country of the Roman code of law, which clothed the ruler with unlimited power and supreme authority. It did not recognise the traditional rights of the German people.

It was encouraged by the princes, taught in the universities, and cultivated by the courts. Other influences that favoured its introduction were those of the empire, the church, the one common commercial language—Latin,—and the desirability, if not necessity, of a uniform jurisprudence and a learned bench. Its reception in the civil courts was not yet final or complete, but steadily advancing; and the administration of justice gradually fell into the hands of men who knew nothing of the German laws, rights, and precedents, and did not want to know. The German people rebelled in vain against the imposition of the new law. The striking contrast between the old and the new is shown by the historian Johannes Janssen in language that presents the introduction into Germany of the Roman code as one of the leading causes of the discontent that is found at this period, especially among the peasants and the lower classes. He says[1]:

Notwithstanding the evils of private warfare, the peasants enjoyed protection of their rights under the Christian German law, and led happy lives. They lived under the regulations of their corporations, paid moderate taxes and services, and settled their grievances according to their traditionary customs in their

[1] Janssen: *History of the German People at the Close of the Middle Ages*, ii., 182–185.

own tribunals. Just as the state's representatives had a voice in the imperial government, the district representatives in the territorial management, so the peasants on an estate had regular meetings to settle matters in the interest of the property. The fully accredited members at those meetings were, so to speak, the manor-government. The taxes, which were moderate, were generally ground rents or charges of fiefdom.

The introduction of the Roman code entirely changed this state of things, and the exclusion of the peasants from the tribunals resulted in the ancient legal customs being entirely set aside. The old customs and unwritten law lost their force, nothing being held as valid that could not be sustained by documentary evidence. The being deprived of the protecting right to be tried by their peers was a serious loss to the tenants and freeholders.

The new code was in no way applicable to the peasant conditions which had gradually developed in Germany. Under the Cæsars there were no free peasants, no life-tenants, or tenants in the German acceptation of the word; therefore the Roman code did not meet the necessities of such a social condition. The Roman Empire recognised only autocrats and slaves; so the new jurists, who judged everything according to the Justinian code, destroyed with merciless hand all that was so dearly connected with German traditions, and built up the new code on the ruins of the ancient order. They looked on all German

leases as limited, and applied the Roman slave law to the German manor rights. They invested avaricious and ambitious princes and landlords with legal authority not only to deprive the peasants of their communal rights, but to evict them from their life-lease possessions and to increase their taxes. . . .

The introduction of the Roman code created unspeakable confusion in all grades of society. Exactly in proportion as it grew and prevailed did national rights and national freedom go to the wall. As in ancient Rome, the law became the means by which the state arrogated to itself supreme power, ignoring all obstacles.

The German prince or ruler was to be a *princeps*, in the ancient Roman sense. That is to say, the judgment and the will of the sovereign determined and regulated legislation and administration,—whether of justice, military, finance, police, commerce, or other branch or field of the government service.

The seething discontent engendered by the foreign code is summed up by Janssen in these words[1]:

Nowhere in the Roman legal system is labour looked upon as the basis of property; the value of free labour, the subjection of the individual to the law of daily

[1] Janssen: *History of the German People at the Close of the Middle Ages*, ii., 104, 105.

work, were quite ignored by its compilers, and hence there is never any question of free organisation of labour and of a just distribution of the produce of labour. Laborious toil was the lot of down-trodden slaves, while the powerful classes possessed and enjoyed.

The more deeply this pagan doctrine rooted itself in the German soil in the course of the sixteenth century, the greater became the abuse of property, the deterioration of the working classes, and the retrogression of the political standing of the nation. Not commercial and industrial life only, but the development of the peasant conditions also, was powerfully disturbed.

But the pernicious workings of the new legal system spread far beyond the domain of industrial economy. Its poison entered into the whole sphere of ecclesiastical and political life. Everywhere favouring the might of property, and the subjection of the nation by princely absolutism, it undermined the foundations of German law and of the German constitution.

It was at this time that the imperial electors chose the young Charles V as Emperor, in 1519. As a condition precedent to his election, his ambassadors were required by the electors to sign capitulations,[1] guaranteeing to the estates their vested rights, and the Emperor himself was required to make oath to them before his corona-

[1] Schoenfeld: *Ranke's Kaiserwahl Karl's V*, p. 84.

tion. In them he pledged himself to uphold the established constitution and to protect the estates in their vested rights and privileges. Without the consent of the electors, he would not involve the empire in any alliance or war, part with any of the possessions of the empire, levy any taxes upon the estates, impose any new tolls or increase any already existing, hold imperial diets, or enlist foreign troops in the imperial service. He further pledged himself to appoint none but natives of Germany to imperial office, to use only the German and Latin languages in the affairs of state, to maintain peace and order, to use the revenues of the crown for the public good, to re-establish the imperial regency or council of administration (*Reichsregiment*), and to reside as much as possible within the bounds of the empire. The estates were not to be subject to any jurisdiction beyond the bounds of the empire. Great monopolies like that of the Fuggers and the aggressions of the court of Rome were to be restrained, and no one should be placed under the ban of the empire without previous formal trial.

In the interim, between the election and the coronation of Charles V as Emperor, an appeal was made to the nobility of Germany that had as important and far-reaching political influence

in many ways as the ninety-five theses nailed on the door of the Castle Church at Wittenberg, October 31, 1517, had in the religious realm. The author of both these documents was the monk, the preacher, the university professor, and the reformer, Martin Luther; and to his teachings on the subject of civil government we now turn our attention. Just at the time when he appeals from the Pope to a general council, and again to his countrymen at large, at the time when he stands alone before representatives of church and state combined against him, at the time when excommunication from the Roman Church has been followed by the ban of the empire, all political and administrative affairs in the Holy Roman Empire of the German nation were in confusion. Ranke thus describes the state of affairs:

As yet everything was wavering and unsettled; no form had been found for the government; no system of finance, no military organisation perfected; there was no supreme court of justice; the Public Peace was not maintained. All classes in the empire were at strife—princes and nobles, knights and citizens, priests and laymen; above all, the higher classes and the peasants. In addition to all these sources of confusion, arose the religious movement, embracing every region of mind, originating in the depths of the national consciousness, and now bursting forth in

open revolt against the head of the hierarchy. The existing generation was powerful, intelligent, inventive, earnest, thoughtful. It had a presentiment that it contained the germ of a great moral and social revolution.[1]

[1] Ranke: *History of the Reformation in Germany*, i., 496.

CHAPTER III

THE NATURE, NECESSITY, AND ORIGIN OF THE STATE

THE state has been defined as "a community of considerable size, occupying a clearly defined territory, owning direct and complete allegiance to a common authority, and invested with a personality which enables it to act more or less as an individual."[1] Another defines it, in its wider significance, as "a body of human beings deriving its corporate unity from the fact that its members acknowledge permanent obedience to the same government, which represents the society in any transactions that it may carry on as a body with other political societies."[2] The state, says another, is "a combination or association of men in the form of government and governed, on a definite territory, united together into a moral organised masculine personality," or, more briefly, "the politically organised national

[1] Jenks: *Law and Politics in the Middle Ages*, p. 68.
[2] Sidgwick: *Elements of Politics*, p. 221.

person of a definite country."[1] "The civil constitution," according to Kant's definition, "is a relation of free men who live under coercive laws, without prejudicing their liberty otherwise in the whole of their connection with others."[2] To Watt, "The state seems to indicate that external form which society assumes in consequence of its organisation; it is the body of society, the political manifestation of its growth."[3] Several other writers on the subject have presented these briefer and no less satisfactory definitions: "A state is a people organised for law within a definite territory"[4]; "a society organised and independent"[5]; and "a particular portion of mankind viewed as an organised unit."[6] An analysis of these definitions of the state emphasises these three essentials: a territory, however small; a number of people, however few; and a vested common authority, sovereign and independent.

Political writers recognise a marked distinction

[1] Bluntschli: *The Theory of the State*, p. 23.

[2] Kant: *Principles of Politics*, p. 35.

[3] Watt: *Outline of Legal Philosophy*, p. 56.

[4] The modern definition of the state. Wilson: *The State*, p. 8.

[5] M'Kechnie: *The State and the Individual*, p. 47.

[6] Definition of the state from the standpoint of the concept. Burgess: *Political Science and Comparative Constitutional Law*, i., 50.

between state and government. The state is the sovereign power residing back of any and all administrations or forms of government. The government may change again and again in name, in form, in fact, and yet the state itself continue unchanged. The government is the state's machinery or organisation, through which its purposes are formulated and executed.[1] The state is larger, deeper, stronger, and more abiding than any particular form, phase, or period of its government. "The distinction is natural and needful. It is suggestively analogous to that between religion and the church; between art and productions which are termed artistic; between science and results in which science is said to be expressed; between righteous authority and controlling power; between justice and statute law."[2] If the throne represent the government, the state may be termed the power behind the throne. It must be kept clearly in mind that the state is more than the government, even when the latter term is stretched to its limit to include the legislative, executive, and judicial machinery and authority of a country.[3] The proper relation

[1] Willoughby: *An Examination of the Nature of the State*, p. 8.

[2] Chamberlain: *The State, its Nature, Origin, and Functions*, p. 2.

[3] M'Kechnie: *The State and the Individual*, p. 49.

between state and government is that of master and servant.

That the state is natural and necessary to man was recognised already by Aristotle. He declared:

> And he who by nature and not by mere accident is without a state is either above humanity, or below it; he is the "tribeless, lawless, hearthless one" whom Homer denounces. . . . The proof that the state is a creation of nature and prior to the individual is that the individual, when isolated, is not self-sufficing; and therefore he is like a part in relation to the whole. But he who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god: he is no part of a state. A social instinct is implanted in all men by nature, and yet he who first founded the state was the greatest of benefactors. For man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all; since armed injustice is the more dangerous, and he is equipped at birth with the arms of intelligence and with moral qualities which he may use for the worst ends. Wherefore, if he have not virtue, he is the most unholy and the most savage of animals, and the most full of lust and gluttony. But justice is the bond of men in states, and the administration of justice, which is the determination of what is just, is the principle of order in political society.[1]

[1] Aristotle: *Politics*, i., 2, pp. 28–30. See Schiller's *Das Eleusische Fest.*

Volumes have been written on speculations and theories concerning the origin of the state. Polybius assigned its origin to man's instinct.[1] Cicero discovered it in man's love of society, and not in his weakness.[2] St. Augustine adopted the theory of Cicero and Plato, that man was led by his own nature to enter society, but added to that the view that he entered society to have peace, and that there was a general agreement (*pactum*) of human society to obey kings. As Martin Luther was an Augustinian monk and made the writings of St. Augustine his special study for many years, and imbibed and reflected his teachings in many matters, it is interesting to observe that here in St. Augustine is to be found the germ of the idea that government rests on the consent of the governed, and that the government is to render service to the governed. In the natural order of the world, God arranged for man to rule only animals. One man was not to be ruled by another.[3] Nicholas of Cusa, a thousand years later, echoed the same principle, though in stronger, clearer language. All men, he main-

[1] Polybius: *Histories*, vi., 4.

[2] Sullivan: *The Antecedents of the Declaration of Independence*, i., 72.

[3] St. Augustine: *Confessiones*, book iii.; *De Civitate Dei*, book xix.; *Sermons in Ante-Nicene and Post-Nicene Fathers*, vi., 302.

tained, are by nature free, and therefore all government springs from and rests on the consent of the governed.[1] Thomas Aquinas held that the state is due to man's social instinct, and is not a consequence of his fall from primitive bliss. Society requires control. Without the latter, the former would soon fall to pieces.[2]

Sir Henry Maine was the leading advocate of the patriarchal theory, *i.e.*, that society originated in separate families, held together by the authority and protection of the oldest valid male ascendant.[3]

Hooker held that the natural laws "bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do or not to do. But forasmuch as we are not by ourselves sufficient to furnish ourselves with competent store of things needful for such a life as our nature doth desire, a life fit for the dignity of man, therefore to supply those defects and imperfections which are in us living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others.

[1] *De Concordantia Catholica*, ii., 12, 14.

[2] Aquinas: *Summa Theologia*, i., xcvi.; *De Regimine Principum*, i., 1. Baumann: *Die Staatslehre des Thomas von Aquino*, p. 108. Bullowa: *The History of the Theory of Sovereignty*, p. 19.

[3] Maine: *Ancient Law*, p. 118.

This was the cause of men uniting themselves at the first in political societies."[1]

The same writer says further: "All public regiment of what kind soever seemeth evidently to have risen from deliberate advice, consultation and composition between men, judging it convenient and behoveful; there being no impossibility in nature considered by itself, but that men might have lived without any public regiment."[2]

The so-called contract theory, in its day, had famous supporters and exercised a wide influence in political affairs. It assumes at the outset that there exists, in addition to and above all human law, a law of nature into which men were born. That law could not control individual passion and greed and pride, nor did it have visible organisation or coercive power. Indeed it developed inevitably into an intolerable state of war, with every man's hand against every other man.[3] Hobbes advocated this contract theory of the origin of civil government, and asserted that in the state of nature every man was in constant conflict and warfare with his neighbour.

[1] Hooker: *Ecclesiastical Polity*, book i., chap. x., pp. 24, 25.

[2] *Ibid.*, p. 27.

[3] Sir Henry Maine discusses the "Law of Nature and Equity" in *Ancient Law*, chap. iii.

In modification of Hobbes's view, Locke asserted[1] that men in the state of nature are not in absolute anarchy, but are subject to the law of reason which "teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions." He viewed political society as constituted by the compact of its original members, a compact that is renewed from generation to generation expressly or tacitly. By this compact the individual voluntarily surrendered into the hands of a central or general authority certain rights and powers whereby his remaining liberties and rights might be protected and maintained; that is to say, all the members of the society agreed together mutually to enter into one community and make one body politic.[2] That which makes the community is the agreement to incorporate and act as one body, and so be one distinct commonwealth.[3]

Spinoza founded the right of the *de facto* government to rule upon its power to maintain itself against force from any quarter whatsoever. Blackstone maintained that men hold together

[1] *On Civil Government*, book ii., chap. ii., par. 6.
[2] *Ibid.*, book ii., chap. viii., par. 95 *et seq.*
[3] *Ibid.*, book ii., chap. xix., par. 211.

in society because they cannot help it. Hobbes's idea of the social contract entered into by the different members of society was one of absolute submission. Rousseau's idea of this contract was that each person put himself under the direction of the will of the community, yet remained as free as before. His contract is not between a man and a ruler but between man and man, each and all retaining equal rights politically.

The force theory needs no refutation for, while it has had very much to do with governments that rise and fall, it has had nothing to do with the general institution of the state. The theory that the state developed from the promiscuous horde does not call for consideration here. It may be stated, however, that the political writers of our own day generally accept Aristotle's view that the state did not develop out of the family, for these two institutions are essentially different.

Famous and influential as the social and governmental contract theories were in their age, and brilliant and persuasive as were the writers who adopted them, "we now know that men lived in civil society, with complicated laws and customs and creeds, for many thousand years before the notion had ever entered anybody's head that

things could be regulated by contract."[1] "Government came, so to say, before the individual and was coeval with his first human instincts."[2]

All through the Middle Ages, and prior to the golden age of the contract theory of the origin of the state, the doctrine of the divine right of kings prevailed. It was held quite generally that two swords had been given to Peter by Christ Himself. The one was to be wielded by the church for the church and the other to be given by the church to a world-emperor and by him to be wielded over the secular realm for the church. Discussion, dispute, and dissension as to the relation properly existing between these two swords continued for centuries. Some held that civil government is evil, and becomes holy only by the authorisation and blessing of the church, that the state needs to be hallowed by the church. Pope Gregory VII, for example, maintained that the state originated in man's pride, worldliness, and ignorance, and is the work of sin and the devil.[3]

Manegold von Lautenbach (1081) declared

[1] Fiske: *Civil Government in the United States*, p. 188.

[2] Wilson: *The State*, p. 12.

[3] Poole: *Illustrations of Mediæval Thought*, p. 229. See Works in Migne, vol. 148. Also see lib. 8, ep. 21, ann. 1080, pp. 456, 457; lib. 4, ep. 2, ann. 1076, p. 243.

that the state is the mere work of man. Kingship does not exist either by nature or merit. The word king is a mere title of office. The power which he has was given him by the people. They made a compact with him and chose him king that he might force evil men to obedience and defend the good from the bad.[1]

The sanctity that had attached in a greater or less degree to kings for centuries belonged to the kingship rather than to the king, to the office rather than to the incumbent. Emperors, kings, and popes alike were made and unmade, crowned and uncrowned, enthroned and dethroned. As the centuries passed, this view became more and more marked. In general the defenders of civil government throughout the Middle Ages contended that the two swords are distinct and independent powers, both instituted by God Himself. This doctrine, century after century, "fought a battle for the principle that the *imperium*, like the *sacerdotium*, proceeds immediately from God (*imperium a Deo*) and therefore depends from God and not from the church (*imperium non dependet ab ecclesia*).[2] Through all the discussion, there was the general admission on the part of

[1] Sullivan: *The Antecedents of the Declaration of Independence*, i., 76, 77.

[2] Gierke: *Political Theories of the Middle Age*, pp. 16, 17.

the church that the origin of the state is mediately divine, and the general claim on the part of the state that its origin is immediately divine. Thus, with both parties, God is either the direct or indirect source of all civil authority and government. He uses His representatives, His creatures, to carry out His will. The same rule would apply to the petty local post as well as to the imperial throne. The Electors of the Holy Roman Empire, the princes or the people of any country, casting votes for their emperor or king were viewed as instruments in the hands of God for carrying out His government in the world. But however certain men were that God was the ultimate cause or origin of the state, this cause fell back into the position of a *causa remota* working through human agency. They introduced as the more proximate cause the political nature implanted by God in man. "More and more decisively was expressed the opinion that the very union of men in a political bond was an act of rational, human will. Occasionally there may appear the notion that the state was an institution which was founded as other human institutions (*e.g.*, monasteries or colleges) were founded, by certain definite founders, either in peaceful wise or by some act of violence; but, in the main, there was a general inclination towards the hypothesis of

some original, creative, act of will of the whole uniting community."[1]

The doctrine of the divine right of kings, as it is commonly termed, asserts the inherent right of the state to exist, and that the civil authorities no less than the ecclesiastical are ordained of God. In other words, the power of the prince comes immediately from God, not mediately through pope or church. The ruler, or the state he represents, is accountable only to God, and not to any earthly power.[2] Sir Frederick Pollock asserts that this doctrine of divine right has no merit to modern eyes, that it is not rational, not ingenious, not even ancient.[3]

Turning now to the teaching and argument of Martin Luther on the origin of the state, we find that in his tract on *Secular Authority*[4] he maintains that the state exists by God's will and institution; for the Apostle Paul writes: "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power,

[1] Gierke: *Political Theories of the Middle Age*, p. 89.

[2] Figgis: *Studies of Political Thought from Gerson to Grotius*, pp. 71, 72.

[3] Pollock: *An Introduction to the History of the Science of Politics*, p. 65.

[4] *Von weltlicher Oberkeit, wie weit man ihr Gehorsam schuldig sei* (1523). Weimar ed., 11 Band, 229 *et seq.*

resisteth the ordinance of God: and they that resist shall receive to themselves damnation."[1] The Apostle Peter exhorts: "Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king, as supreme, or unto governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well."[2] The right of the sword has existed since the beginning of the world. When Cain killed his brother Abel, he was so fearful of being put to death himself that God laid a special prohibition thereupon that no one should kill him, which fear he would not have had had he not seen and heard from Adam that murderers should be put to death. Further, after the flood, God repeated and confirmed it in explicit language, when he declared: "Whoso sheddeth man's blood, by man shall his blood be shed."[3] This law was ratified later by the law of Moses: "But if a man come presumptuously upon his neighbour, to slay him with guile; thou shalt take him from mine altar, that he may die";[4] and yet again: "life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe."[5]

[1] *Romans* xiii., 1, 2.
[2] *1 Peter* ii., 13, 14.
[3] *Genesis* ix., 6.
[4] *Exodus* xxi., 14.
[5] *Exodus* xxi., 23–25.

Christ confirmed it also when He said to Peter in the garden: "All they that take the sword shall perish with the sword."[1] The words of Christ: "But I say unto you, That ye resist not evil"[2]; "Love your enemies, . . . do good to them that hate you"[3]; and similar passages, having great weight, might seem to indicate that Christians under the Gospel should not have a worldly sword; but the human race is to be divided into two classes, one belonging to the kingdom of God and the other to the kingdom of the world. To the first class belong all true believers in Christ and under Christ, for Christ is king and Lord in the kingdom of God.[4] These people need no worldly sword or law. If the world were made up of true Christians, it would need no prince, king, or lord, no sword or law, for they have the Holy Ghost in their hearts who suffer wrong gladly and themselves do wrong to no one. There is no need of quarrel or contention, of court or punishment. St. Paul says: "The law is not made for a righteous man, but for the lawless and disobedient, for the ungodly and for sinners"[5]; for the righteous man of himself does everything that

[1] *Matthew* xxvi., 52. [2] *Ibid.*, v., 38, 39.
[3] *Ibid.*, v., 44.
[4] *Psalm* ii., 6, "und die ganze Schrift."
[5] *1 Timothy* i., 9.

the law demands and more; but the unrighteous do nothing right, and they therefore need the law to teach, constrain, and compel them to do right. A good tree requires no instruction or law that it may bring forth good fruit, but its nature causes it to bear fruit after its kind. Thus are all Christians so fashioned through the Spirit and faith that they do right naturally, more than man could teach them with all laws. All those who are not Christians in this particular sense belong to the kingdom of the world. Inasmuch as there are few who are true Christians in faith and life, God established, in addition to the kingdom of God, another rule—that of temporal power or civil government, and gave it the sword to compel the wicked to be orderly. It is for this worldly estate that law is given. Christ rules without law, alone through the Spirit, but worldly government protects the peace with the sword. Likewise, true Christians, although not in need of it for themselves, nevertheless render cheerful obedience to this government, through love for the others who do need it. A Christian himself may wield the sword, when called upon, to maintain peace among men and to punish wrong. This authority, which is God's handmaid, as St. Paul says, is as necessary and good, as other worldly callings. God therefore instituted two

regiments or governments, the spiritual which, through the Holy Ghost under Christ makes Christian and pious people, and the worldly or temporal which warns the non-Christians and the wicked that they must maintain external peace. We must clearly distinguish between these two powers and let them remain, — the one that makes pious, the other that makes for external peace and protects against wickedness. Neither one is sufficient in the world without the other, for without the spiritual estate of Christ no one can be good before God through the worldly estate. Where civil government alone rules, there would be hypocrisy, though its laws were like God's commandments themselves, for without the Holy Spirit in the heart none can be pious, whatever good works he may perform. Where the spiritual estate rules over land and people, there will be unbridled wickedness and an opportunity for all kinds of villainy, for the common world cannot accept or understand it.

But, it may be said, if then Christians do not need the temporal sword or law, why does St. Paul say to all Christians: "Let every soul be subject unto the higher powers"?[1] In reply to this, it is to be said again, that Christians among themselves and by and for themselves require no

[1] *Romans* xiii., 1.

law or sword, for to them they are not necessary or useful. But because a true Christian on earth lives for and serves not himself but his neighbour, so he also, from the nature of his spirit, does that that he himself does not need, but that is useful and necessary to his neighbour. The sword is a great and necessary utility to the whole world for the maintenance of the peace, the punishment of wrong, and the restraint of the wicked. So the Christian pays tribute and tax, honours civil authority, serves, assists and does everything he can to maintain that authority with honour and fear.

In his *Address to the German Nobility*,[1] Luther asserts that the temporal power is a fellow-member of the Christian body, and although it has a bodily work, it is nevertheless of spiritual estate. In this appeal, and elsewhere as well, he makes a clear distinction—as will be shown in another chapter—between legitimate and illegitimate, between constitutional and unconstitutional administration or government, declaring that these may be open to question, investigation, and correction. It is sufficient at this point to note that he maintains that the state is a necessity to man, that it

[1] *An den christlichen Adel deutscher Nation von des christlichen Standes Besserung* (1520). Weimar ed., 6 Band, 381 *et seq.*

has existed from the beginnings of the race, and that it—*i.e.*, not any one particular state, nor any one particular government or form of government, but the *state*—is as necessary a part of the divine plan or economy for the benefit of the external life of man in society as the institution of the church and the proclamation of the Gospel is a necessary part of that same divine plan for the benefit and the salvation of the immortal soul. The civil government, therefore, deserves and demands our loyalty and obedience within its legitimate jurisdiction as truly as the church has a right to similar loyalty and obedience within its sphere.

Luther absolutely severs the state from any origin from or dependence upon the church. Though the spiritual significance of the state was yet dark to him, he presented the moral or ethical nature of the state with faithful emphasis.[1] Back of all human instrumentalities he saw the divine hand controlling, in any event permitting, the various operations of states and of peoples as of individuals. It is an easy thing, he wrote to the insurgent peasants of Swabia in 1525, for the Lord God to cast empire and principality here

[1] Bluntschli: *Geschichte der neueren Statswissenschaft, Allgemeines Statsrecht und Politik seit dem 16 Jahrhundert bis zur Gegenwart*, pp. 58–61.

and there. Now He gives an empire to a wicked knave, taking it from a pious man, sometimes through the treachery of evil men, sometimes through inheritance. He has power in all things among men to give them to whom He will.[1]

In his explanation of the Fourth Commandment,[2] Luther includes all who are in the service of the state, from electors down to members of town councils, as among those who are to be feared, respected, and obeyed because they bear the "sword of the Lord," and quotes the Old Testament law: "Thou shalt not revile the gods [judges], nor curse the ruler of thy people."[3]

We have yet another presentation of the views of Luther and his associates in an historic document written by Melanchthon and presented to Charles V at the Imperial Diet held in Augsburg in 1530,—the first creed of Christendom that sets forth the origin, the nature, and the separate jurisdiction of the state as distinct from the church. The theory of the nature and origin of the state as then and there expressed is maintained to-day by hundreds of millions in the

[1] Bluntschli: *Geschichte der neueren Statswissenschaft, Allgemeines Statsrecht und Politik seit dem 16 Jahrhundert bis zur Gegenwart*, p. 68

[2] *Die zehn Gebote dem Volk zu Wittenberg gepredigt. Das vierte Gebot* (1516). Walch ed., iii., 1222 *et seq.*

[3] *Exodus* xxii., 28.

most advanced nations and freest governments on the face of the earth.[1] This document declares that legitimate civil enactments are good works of God; that it is lawful for Christians to hold civil offices, to pronounce judgment and decide cases according to the existing laws of the country or realm; to inflict just punishment, wage just wars, and serve in them; to make lawful contracts, hold property; to make oath when required by the magistrate; to marry and be married. It expressly condemns those who forbid to Christians the performance of these civil duties. It likewise condemns those who make evangelical perfection consist not in the fear of God and in faith, but in the abandonment of all civil duties. It declares that Christians ought necessarily yield obedience to their civil officers and laws unless they command something sinful, in which case they ought to obey God rather than men (*Acts* v., 29).[2]

[1] The origin of the state as an institution is too frequently, unfortunately, confounded with the origin of particular states, particular forms of government, or particular rulers. They must be carefully distinguished. The failure to do so leads more than one writer astray in the presentation of Luther's teaching of the divine origin of the state. See Willoughby: *An Examination of the Nature of the State*, pp. 48, 50.

[2] *The Augsburg Confession*, Article xvi., Walch ed., xvi., 831 *et seq.*

Morley asserts that:

> The statement that while the constitution of man is the work of nature, that of the state is the work of art, is as misleading as the opposite statement that governments are not made, but grow, and the truth lies between them, in such propositions as that institutions owe their existence and development to deliberate human effort, working in accordance with circumstances naturally fixed both in human character and in the external field of its activity.[1]

The government of the state may be imperfect, as may be likewise the government of the church. Either power may be despotic on the one hand, or democratic on the other hand; but the state is the one earthly institution in the maintenance and advancement of which every class, indeed every individual, may well have the deepest interest. Indeed "there is no existing institution which can claim from the bible so distinctly sacred a character." [2]

"For those who believe that man was created in the divine image, there is always the fundamental belief that the impulse to social life and to the formation and development of the state comes from Him, and that He is therefore con-

[1] Morley: *Rousseau*, ii., 179, 180.

[2] Stanley: *Essays chiefly on Questions of Church and State*, p. 351.

cerned with all things pertaining to order and government."[1]

Luther teaches us that the state is natural and necessary to the human race and that, as such, it is a part of the divine economy for man.[2] This being true, it has always existed and must continue to exist to the end of time. Nations come and go, kingdoms rise and fall, forms of government and administration suffer change; but the state, as an institution, is permanent and universal.

The state, indeed, is as natural and necessary

[1] Prall: *The State and the Church*, pp. 96, 97.

[2] "It would be peculiarly improper to omit," said George Washington in his Inaugural Speech to Congress in 1789, "in this first official act, my fervent supplications to that Almighty Being who rules over the universe, who presides in the councils of nations, and whose providential aids can supply every human defect, that his benediction may consecrate to the liberties and happiness of the people of the United States a government instituted by themselves for these essential purposes, and may enable every instrument employed in its administration to execute, with success, the functions allotted to his charge. In tendering this homage to the Great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own, nor those of my fellow citizens at large less than either. No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than the people of the United States. Every step by which they have advanced to the character of an independent nation, seems to have been distinguished by some token of providential agency."—Bryan: *The World's Famous Orations*, viii., 80, 81.

for men in association as food is for the man individually. As there is one common will in the individual, directing and controlling the various members of the body—for there could be no peace or harmony otherwise, but constant conflict and confusion,—so there must be and, in view of this natural necessity, there is one common governing will among men who live within touch of one another with that power to regulate and control. The form of its government and the manner of its administration are determined by men, but the state itself is a human necessity arising immediately upon the creation of man by the divine hand. Hunger and thirst cannot well be denominated as of human origin or institution, although they belong to human experience; neither, in this sense, may it be said of the state. The origin of government belongs to the secrets of the unknown past; but no people have ever been known to the world who did not recognise the necessity of a supreme authority or government, to which they owed allegiance and obedience. "Wherever men are found they live under some form of government, however rude and imperfect. In all parts and in all ages of the world they have seen the necessity of some power to protect the weak and restrain the strong, and have therefore set up a supreme authority

for the common welfare."[1] The individual is born in the state politically, as he is born in the family. The individual and the state belong as much to nature as the whole created universe. "The origin of both is an integral part of the mystery of the universe that has baffled the endeavours of uninspired finite reason to solve."[2]

[1] Peterman: *Elements of Civil Government*, p. 158.
[2] M'Kechnie: *The State and the Individual*, p. 63.

CHAPTER IV

THE SOVEREIGNTY OF THE STATE

A. Viewed Internally

SOVEREIGNTY is an essential attribute of every independent state. It is the supreme dignity, power, and authority of the state. As Bluntschli defines it: "The state is the embodiment and personification of the national power. This power, considered in its highest dignity and greatest force, is called sovereignty."[1] The word sovereignty was first used in this sense, it is commonly asserted, by the Frenchman Jean Bodin in the third quarter of the sixteenth century. He declared that sovereignty is the absolute and perpetual power of a state.[2] A later authority on the subject expresses the notion of sovereignty in these words:

[1] Bluntschli: *The Theory of the State*, p. 463.

[2] "Puissance absolue et perpetuelle d'une république." Bodin: *De la République*, i., 1.

If a determinate human superior, not in a habit of obedience to a like superior, receive habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent. . . . In order that a given society may form a society political and independent, the two distinguishing marks which I have mentioned above must unite. The generality of the given society must be in the *habit* of obedience to a determinate and common superior; while that determinate person, or determinate body of persons, must not be habitually obedient to a determinate person or body.[1]

Sovereignty, as understood in our age, implies absolute political power within the state,—supreme power to regulate all affairs within the state,[2] and yet itself subject to no authority. It is something more than a mere collection or aggregation of all the various particular powers of the state, such as levying taxes, making war and peace, and maintaining various departments of the public service. It includes all these, but represents still more.[3] It is not only the sum

[1] Austin: *Lectures on Jurisprudence*, i., 117, 118.

[2] Professor Huxley says: "It follows that no limit is or can be theoretically set to state interference."

[3] Willoughby: *An Examination of the Nature of the State*, pp. 194, 195.

of all the parts, but it is the life of the state itself, properly regulating and harmonising these various parts. It is not only the various members as of the human body, separate and distinct, but it is the sum of all of them in vital totality, each in proper place for the performance of its appropriate functions; for the life of the body is much more than the sum of its various members in and of themselves. An earlier use of the term, in the Middle Ages, was applied to the highest authority in any given branch of governmental administration, as for example, the supreme court of a nation.[1] In the course of time, however, the term came to be applied to the supreme will and power of the state as a unitary totality.

Under feudalism, sovereignty was in a large measure associated with the ownership or possession of territory.[2] Barons decided property titles and private rights by the custom and the decisions of their own courts, levied tolls, made war, and frequently coined money.[3] As further territory was secured by war, inheritance, marriage, contract or otherwise, the same practically sovereign powers were exercised over the extended estate,

[1] Bluntschli: *The Theory of the State*, p. 463.
[2] Maine: *The Ancient Law*, p. 102.
[3] Wilson: *The State*, pp. 177, 178.

and sovereignty in the barony developed into sovereignty of the realm.

Sovereignty, again, is variously located, by different writers, in the people at large, that is, the majority of the unorganised mass of the people; in the assembled citizens of the state; in the people, unorganised, but capable of organisation; in the state or nation; and in the ruler.[1]

A distinction is also to be made between political sovereignty and legal sovereignty. The political sovereign is the "intangible source of all government: the legal sovereign is simply that part of the actual machinery of government which is superior to the other parts, having legal control over the rest, and being itself subject to none. The latter is only a particular and perhaps temporary embodiment of the former which is perpetual and inalienable."[2] The legal sovereign is different in every state, for it is to be found in that person or organ in whom is placed by law the right to speak the last word. The King of Great Britain is that country's titular sovereign, but the king in parliament (parliament and the king together) is the legal sovereign. "Its formal decisions embodied in statutes are legally irresponsible, irresistible, and irreversible—except by parliament

[1] Bluntschli: *The Theory of the State*, pp. 467–474.
[2] M'Kechnie: *The State and the Individual*, p. 132.

itself."[1] De Lolme, who has been quoted by nearly every succeeding writer on the powers of parliament, declared: "It is a fundamental principle with English lawyers that parliament can do everything but make a woman a man, and a man a woman." As a matter of fact, however, parliament does not and may not be expected to do anything contrary to the cherished principles and privileges of the people, for did they do so, their constituencies would return other members to the House of Commons more in accord with their own will, and parliament would be changed. The sovereignty of parliament is thus limited *de facto*.[2] The political or actual sovereign of Great Britain, therefore, is the people back of the parliament.

The various separate states of a confederation may be virtually sovereign. The constitution of Switzerland, for example, declares: "The cantons are sovereign, so far as their sovereignty is not limited by the federal constitution; and, as such, they exercise all the rights which are not delegated to the federal government."[3] The constitution of the United States provides that: "This consti-

[1] M'Kechnie: *The State and the Individual*, p. 127.

[2] Wilson: *The State*, p. 600.

[3] *Constitution of the Swiss Confederation*, Chap. i., Art. 3. See Dodd: *Modern Constitutions*, ii., 257.

tution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." [1] Within certain limits, the various states of the United States, like the Swiss cantons, are possessed of supreme or sovereign power.

It is difficult to reconcile this division of power —for sovereignty is necessarily unitary and indivisible—except by locating sovereignty in the combined will of the whole. Sovereign power implies unity. Division implies separation, disagreement, weakness, paralysis. It is said of us, therefore, that "sovereignty rests in its entirety with that not very determinate body of persons, the people of the United States, the powers of sovereignty resting with the state and federal authorities by delegation from the people." [2]

Bodin already declared sovereignty to be indivisible.[3] Rousseau asserted: "Though power

[1] *Constitution of the United States of America*, Article VI.

[2] Wilson: *The State*, p. 610.

[3] According to Bodin, sovereignty, the highest power in a state, is subject to no laws but is itself the maker and master of them. Whether it reside in one person or in a number of

may be divided, will cannot." The feudal system and the currency of the principles of natural law had excluded, in the Middle Ages, the doctrine of the state's unlimited and indivisible authority over its own territory.

The mediæval system of Europe [says Sir Frederick Pollock] was not a system of states in our sense or in the Greek sense. It was a collection of groups, held together in the first instance by ties of personal dependence and allegiance, and connected among themselves by personal relations of the same kind on a magnified scale. Lordship and homage, from the emperor down to the humblest feudal tenant, were the links in the chain of steel which saved the world from being dissolved into a chaos of jarring fragments. . . . The old unity of the clan had disappeared, and it was only gradually and slowly, as kingdoms were consolidated by strong rulers, that the newer unity of the nation took its place.[1]

Once discover where that political power lies that is all-controlling and not controlled, that is permanent, independent, and supreme, and

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persons, it is above all law, incapable of limitation or division, and has an absolute claim to the obedience of all its subjects, irrespective of the justice or policy of its acts. Bryce: *Studies in History and Jurisprudence*, pp. 532, 533.

[1] Pollock: *An Introduction to the History of the Science of Politics*, pp. 47, 48.

you find the sovereign.[1] It regulates all matters between man and man and between man and the state. The authority of the state

is superior to all other humanly established authorities; and all political powers exercised by other individuals or bodies of individuals are ultimately derived from it. It alone has the power of expressing a command, or of determining the validity of an existing rule with such absolute authority that no recourse is admitted to another power, either in search for the authority upon which such order or command is based, or for the ultimate determination of the wisdom or moral propriety of the actions so ordered. The state is thus supreme not only as giving the ultimate validity to all law, but *as itself determining the scope of its own powers*, and itself deciding what interests shall be subjected to its regulation.[2]

This is that political sovereignty that has no limit within its own territory but that of incapacity and none without its bounds but that of foreign power. It must be able to maintain and support

[1] Blackstone declares that, whatever form the government may assume, "there is and must be a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summa imperii* or the rights of sovereignty reside." Pollock: *An Introduction to the History of the Science of Politics*, p. 80.

[2] Willoughby: *An Examination of the Nature of the State*, pp. 192, 193.

itself, for it is self-dependent, if it be independent. As Jellinek expresses it: "The state finds the ground for its own rights and duties in itself."[1] In the last resort, sovereignty resides in the person or persons possessing the power permanently to carry their political will into effect, despite the opposition or adverse influence of any other power. That is to say, it is will, not force, that forms the basis of the state.[2]

It has been shown that at the time of the election of Charles V as Emperor of the Holy Roman Empire of the German nation, Germany was what might be termed a confederacy, consisting of a number of virtually sovereign states,[3] a larger number of smaller political powers and territories, free cities, etc., generally having their legislative assemblies, courts, and rulers, as did the empire itself. Yet, with the confusion that reigned, the constantly changing jurisprudence, and either the absence of permanent courts of appeal, or inability to enforce their decisions, it is

[1] Jellinek: *Gesetz und Verordnung*, p. 196.

[2] Green: *Lectures on the Principles of Political Obligation*, p. 121 *et seq.* M'Kechnie: *The State and the Individual*, p. 69.

[3] The German electors were able to maintain sovereignty in their own dominions from the middle of the fourteenth century, based on the provisions of the Golden Bull, because they exercised supreme authority in them as their proper right. Bluntschli: *The Theory of the State*, p. 465.

difficult to locate the sovereignty of that age and people. In many matters the electors possessed sovereign powers in their own respective territories. In other matters, the Imperial Diet, composed of three colleges, with the emperor, possessed legal sovereignty. Actual or political sovereignty, then as now, was to be found not in the legal expression of the will of the people through their representatives, but the power back of the representatives supporting them in some measures and opposing them in others. The mark of sovereignty is to be seen not alone in the will of the people as definitely expressed in formal action but in that same will acquiescing in political measures and conditions. The sovereign power may passively permit, as well as positively command or prohibit.

With this general view of the sovereignty of the state, so far as it concerns its own territory and its own people, we now turn to Martin Luther's teachings as to the authority of the state within these limits. Ecclesiastical courts, with ultimate appeal to Rome, had jurisdiction in his day over all cases involving ecclesiastics, including lay members of the various church orders and their families. It had been maintained for centuries that the civil courts of the land had no jurisdiction in any such matters. But Luther declared

that the law of the land properly covers every one within the bounds of the kingdom, including clergy as well as laity, thus abolishing the so-called "benefit of clergy." To him, the state alone possesses coercive authority. His view of the church and ecclesiastical authority absolutely excludes every extension of that authority, as divinely ordained, to the sphere of temporal, political, or civil life.

In his *Appeal to the German Nobility* he says[1]:

Forasmuch as the temporal power has been ordained by God for the punishment of the bad and the protection of the good, therefore we must let it do its duty throughout the whole Christian body, without respect of persons, whether it strike popes, bishops, priests, monks, nuns, or whoever it may be. If it were sufficient reason for fettering the temporal power that it is inferior among the offices of Christianity to the offices of priest or confessor, or to the spiritual estate —if this were so, then we ought to restrain tailors, cobblers, masons, carpenters, cooks, cellarmen, peasants, and all secular workmen, from providing the pope or bishops, priests and monks, with shoes, clothes, houses, or victuals, or from paying them tithes. But if these laymen are allowed to do their

[1] *An den christlichen Adel deutscher Nation von des christlichen Standes Besserung* (1520), Weimar ed., 6 Band, 381 *et seq.* Wace and Buchheim: *Luther's Primary Works*, p. 161 *et seq.*

work without restraint, what do the Romanist scribes mean by their laws? They mean that they withdraw themselves from the operation of temporal Christian power, simply in order that they may be free to do evil, and thus fulfil what St. Peter said: "There shall be false teachers among you, . . . And through covetousness shall they with feigned words make merchandise of you."[1] Therefore the temporal Christian power must exercise its office without let or hindrance, without considering whom it may strike, whether pope or bishop, or priest. Whoever is guilty, let him suffer for it.

Whatever the ecclesiastical law has said in opposition to this is merely the invention of Romanist arrogance. For this is what St. Paul says to all Christians: "Let every soul" (I presume including the popes) "be subject unto the higher powers, . . . do that which is good, and thou shalt have praise of the same . . . for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil."[2] Also St. Peter: "Submit yourselves to every ordinance of man for the Lord's sake, . . . for so is the will of God."[3] He has also foretold that men would come who would despise government,[4] as has come to pass through ecclesiastical law.

Although the work of the temporal power relates to the body, it yet belongs to the spiritual estate.

[1] *2 Peter* ii., 1, 3.
[2] *Romans* xiii., 1–4.
[3] *1 Peter ii.*, 13, 15.
[4] *2 Peter* ii.

Therefore it must do its duty without let or hindrance upon all members of the whole body, to punish or urge, as guilt may deserve, or need may require, without respect of pope, bishops, or priests, let them threaten or excommunicate as they will. That is why a guilty priest is deprived of his priesthood before being given over to the secular arm; whereas this would not be right, if the secular sword had not authority over him already by divine ordinance.

It is, indeed, past bearing that the spiritual law should esteem so highly the liberty, life, and property of the clergy, as if laymen were not as good spiritual Christians, or not equally members of the church. Why should your body, life, goods, and honour be free, and not mine, seeing that we are equal as Christians, and have received alike baptism, faith, spirit, and all things? If a priest is killed, the country is laid under an interdict; why not also if a peasant is killed? Whence comes this great difference among equal Christians? Simply from human laws and inventions.

Luther thus emphatically declares that every person living within the boundaries of any given state is subject to its laws—whether he be an ecclesiastic or a layman, and is equally entitled to its protection, whether he be a member of the church or a heretic. Status in the church does not affect or determine status in the state. The church has a right to determine ecclesiastical

status, but it has no right to determine civil status. Almost four centuries have passed since Luther made his argument, but it is as true and as applicable to-day as it was then. The sovereignty of the state, in its accepted significance, implies the subjection under it of every individual within its borders.

The views of a later writer, much to the same effect, have been expressed thus:

> The power and the right of the state extend to the regulation of all actions within it, whether these be called civil or sacred. Claims such as the church of Rome makes to determine infallibly what is right and lawful for kings and states and their subjects to do, and what it is unlawful for them to do, Spinoza regards as not only inconsistent with the free exercise of that reason which is God's best gift to man, but also as fatal to the peace, prosperity, and independence of any state that allows such dictation from without.[1]

"The modern state," says Bluntschli, "does not consider religion a condition of legal status. . . . It feels itself independent, even as against the church . . . and maintains its supremacy even over the church. It recognises no superior

[1] Duff: *Spinoza's Political and Ethical Philosophy*, pp. 492, 493.

status in the clergy, abolishes their privileges and immunities, and extends the authority of law over all classes equally."[1]

The Middle Ages accepted the teaching of the religious duty of obedience to the powers that be, as set forth in *Romans* xiii and *1 Peter* ii, but the common interpretation of these texts was that "the powers that be" were the ecclesiastical authorities, and that obedience belonged, in the last resort, to the Pope of Rome. Not only was resistance against the king allowed when authorised from Rome, but it was sometimes ordered from there. It was Luther who insisted that this obedience in all political and secular affairs is due the civil ruler, and that the church possesses no coercive authority whatever.[2]

Having his high conception of the origin and nature of the state, Luther expressed himself in the strongest terms, consistently and persistently, on behalf of absolute obedience on the part of the subject to the state, so far as its requirements were constitutional or legal, and not clearly forbidden by the word of God. In a sermon on the Fourth Commandment,[3] preached

[1] Bluntschli: *The Theory of the State*, pp. 58, 59.

[2] Figgis: *Studies of Political Thought from Gerson to Grotius*, p. 66.

[3] Walch ed., iii., 1222 *et seq.*

at Wittenberg in 1516, he speaks of the duty of obedience to civil authority, which is to be feared because it wields the sword of the Lord. The law says: "Thou shalt not revile the gods [judges], nor curse the ruler of thy people."[1] Even in the case of taxation and oppression, the subjects are to bear it not otherwise than as the hand of the Lord which bears heavily upon them on account of their sins and shortcomings.

In his explanation of the Fourth Commandment, as given in his catechism, Luther says God gives and preserves to us through civil government, as through parents, maintenance, house and home, protection and security; therefore we are under obligations to honour temporal authority and esteem it the dearest treasure and costliest gem on earth.[2]

At another time, Luther discusses the question whether the laws of Moses, or the imperial laws are to be the basis of judgment, in view of the fact that some persons asserted that the imperial laws were unchristian. If the temporal laws, he says, take a position against God in any matter—though Luther admits he knows of none—the Christian certainly should not be governed

[1] *Exodus* xxii., 28.

[2] *Der grosse Catechismus* (1529): *Das vierte Gebot, Du sollst deinen Vater und Mutter ehren.* Walch ed., x., 58, 59.

thereby. But inasmuch as such temporal laws are an external thing, as eating and drinking, clothing, house and court, etc., they do not affect Christians, who are governed by the Spirit of God in accordance with the Gospel. Not the laws of Moses, but the imperial laws, are now in force in the world, he says, and it would not be right to introduce sects and divisions by adopting the law of Moses and ignoring the imperial laws. Faith and love can well remain with and under the imperial laws. Were the emperor and the princes to unite in declaring the law of Moses as in force, then it would be our duty to observe it. Otherwise, however, we should not take up any one law and decry others.[1]

His theory of the duty of obedience is shown by a letter written concerning the revolt of the Danish nobles and the Lübeckers against the reigning Christian II.[2] Assuming, he says, that the King is wrong, the Danes and Lübeckers are constituting themselves judges and over-lords of the King. "Were every one who is right himself to punish the wrong-doer, what a spectacle

[1] *Bedenken D. Martin Luthers, ob man nach Mose oder kaiserlichen Rechten richten oder urtheilen solle* (1524), Walch ed., x., 354–357.

[2] Raumer: *Ueber die geschichtliche Entwickelung der Begriffe von Recht, Staat und Politik*, p. 168.

we would have in the world! Then we would see the servant strike the master, the maid the mistress, the child the parents, the scholars the teacher. That would be a praiseworthy state of affairs! What need would there be for law and temporal authority, ordained by God?"

Luther clearly insists on obedience being rendered in all doubtful cases. While roundly denouncing rulers, at times, as incapable and unworthy,[1] he maintains that the office must be respected and obedience in all legitimate affairs must be rendered. That is to say, an unworthy person holding a post of civil authority must be respected, not necessarily as an individual, but as a representative of the government. In a sermon on *Tribute to Cæsar*, based on the words, "Render therefore unto Cæsar the things which are Cæsar's, and unto God the things that are God's," he says:

With the words of this text Christ praised civil authority, and commanded that men give it what belongs to it. He here clearly confirms civil authority, princes, and lords, to whom men are to be obedi-

[1] "From the beginning of the world," Luther says, "an intelligent prince has been a rare bird, and a pious one a still rarer. They are usually the greatest fools or the worst scoundrels on earth." *Von weltlicher Oberkeit, wie weit man ihr Gehorsam schuldig sei* (1523). Weimar ed., 11., Band, 229 *et seq.*

ent, whoever they may be and whatever they may be, without regard to whether they possess or use the rule and authority righteously or wrongfully. There must be regard only to their power and authority, for it is good, inasmuch as it has been ordained of God (See *Romans* xiii., 1). Civil authority must not be reviled because princes and tyrants may oppress their subjects and misuse their God-given office. They will surely be required to render an account thereof. The abuse of a thing does not make a thing evil that is itself good. A gold chain is good, and is not made worse because it is worn on a harlot's neck. If a person should destroy my eye with one, would I blame the chain for it? Certainly not.

In like manner must we endure the authority of the prince. If he misuse or abuse his authority, we are not to entertain a grudge, seek revenge or punishment. Obedience is to be rendered for God's sake, for the ruler is God's representative. However they may tax or exact, we must obey and endure patiently. It will duly appear whether they rule with right or not.

St. Paul expresses the duty of the subject to civil government beautifully and clearly: "Let every soul be subject unto the higher powers, for there is no power but of God. The powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil.

Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same; for he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience' sake. For for this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing. Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour."[1]

To this end is civil authority instituted of God, to maintain public peace, which of itself is of greater value than all estate in the entire world.[2]

Spinoza, maintaining a view similar to that of Luther on this point, held, as Professor Duff shows, that "disobedience to a civil order which maintains a stable system of right and duty is never virtuous; nor has any man a right to refuse to recognise a law because he thinks he knows a better end or ideal."[3]

[1] *Romans* xiii., 1–7.

[2] Kirchen-Postille: *Am dreiundzwanzigsten Sonntage nach Trinitatis*, Matt. xxii., 15–22: "Gebet dem Kaiser, was des Kaisers ist, und Gotte, was Gottes ist." Walch ed., xi., 1802 *et seq.*

[3] Duff: *Spinoza's Political and Ethical Philosophy*, p. 497.

Luther holds that Christians, as members of the state, are bound to take up arms in defence of their rulers, when these are unlawfully attacked; and when oppressed, or directed to do wrong, they are to maintain an attitude of "passive resistance," or "passive obedience," which may mean the same thing; that is, while not openly refusing to obey, and not actively resisting the government, they endure with patience what is forced on them and make the most of it. "Christians may not resist, but suffer, though they shall not approve or serve."[1] They will suffer wrong from the government, but will not do wrong to it or for it. It is only when the civil authority commands the performance of something expressly or explicitly contrary to the word of God that the subject has a right to dispute, oppose, or disobey its authority.

[1] *Von weltlicher Oberkeit, wie weit man ihr Gehorsam schuldig sei* (1523). Weimar ed., 11 Band, 229 *et seq.*

CHAPTER V

THE SOVEREIGNTY OF THE STATE

B. Viewed Externally

ANOTHER element of sovereignty is independence of the authority of any external or foreign influence or power, ecclesiastical or civil[1]; for no state which is not independent can have a law of its own.[2] "If a state is compelled to recognise the political superiority of another, it loses its sovereignty, and becomes subjected to the sovereignty of the latter."[3] If, upon any single point, however insignificant, the state's own will be not final, but is legally dependent upon the consent of another power, its sovereignty is destroyed.[4]

One of the most marked features of Luther's work was his call for an absolute resistance on

[1] See M'Kechnie: *The State and the Individual*, p. 129.
[2] See Wilson: *The State*, p. 609.
[3] Bluntschli: *The Theory of the State*, p. 475.
[4] Willoughby: *An Examination of the Nature of the State*, p. 196.

the part of the rulers of Germany to foreign interference in their own temporal affairs. It must be borne in mind that it was just at this time that Sylvester Mazzolini de Prierio, the master of the sacred palace, published a work in which he declared that the decision of all controversies belongs to the pope alone, and that the pope is the first of all ecclesiastical princes, the father of all secular rulers, the chief of the world, and essentially the world itself.[1] The same writer elsewhere affirms that the pope is as much superior to the emperor as gold is more precious than lead[2]; that the pope may elect and depose both emperors and electors, establish and annul positive rights; and that the emperor, though backed by all the laws and nations of Christendom, cannot decide the least thing against the pope's will. This was a voice from the pope's own palace.[3]

In his *Appeal to the German Nobility*,[4] Luther

[1] "Caput orbis et consequenter orbis totus in virtute. De juridica et irrefragabili veritate Romanæ Ecclesiæ." *Bibl. Max.*, 19, cap. 4.

[2] "Papa est imperatore major dignitate plus quam aurum plombo." *De Papa et ejus potestate*, p. 371.

[3] D'Aubigne: *History of the Reformation of the Sixteenth Century*, ii., 116, 117.

[4] *An den christlichen Adel deutscher Nation von des christlichen Standes Besserung* (1520). Weimar ed., 6 Band, 381 *et seq.* Wace and Buchheim: *Luther's Primary Works*, p. 161 *et seq.*

goes into a detailed statement of the manner and ways in which the ecclesiastical power of Rome had been interfering with Germany's rights and liberties, as he conceived them. He declared there was neither right nor reason in the exactions and claims of the pope and the Church of Rome over the German people. He says in this appeal: "I think Germany now pays more to the pope than it formerly paid to the emperors; nay, some think more than 300,000 guilders are sent from Germany to Rome every year, for nothing whatever; and in return we are scoffed at and put to shame. Do we still wonder why princes, noblemen, cities, foundations, convents, and people grow poor? We should rather wonder that we have anything left to eat."

In the same appeal, he charges that the popes had been receiving *annates* (that is, half of the first year's income from every benefice) from all German benefices for more than a century, for the declared purpose of protecting Christendom against the Turks and Infidels, but misappropriated it for the payment of thousands of posts and offices at Rome. He makes the following assertions and recommendations:

Whenever there is any pretence of fighting the Turks, they send out some commission for collecting money, and often send out indulgences under the

same pretext of fighting the Turks. They think we Germans will always remain such great and inveterate fools that we will go on giving money to satisfy their unspeakable greed, though we see plainly that neither annates, nor absolution money, nor any other—not one farthing—goes against the Turks, but all goes into the bottomless sack. They lie and deceive, form and make covenants with us, of which they do not mean to keep one jot. And all this is done in the holy name of Christ and St. Peter.

This being so, the German nation, the bishops and princes, should remember that they are Christians, and should defend the people, who are committed to their government and protection in temporal and spiritual affairs, from these ravenous wolves in sheep's clothing, who profess to be shepherds and rulers; and since the annates are so shamefully abused, and the covenants concerning them not carried out, they should not suffer their lands and people to be so piteously and unrighteously flayed and ruined; but by an imperial or national law they should either retain the annates in the country, or abolish them altogether. For since the popes do not keep the covenant, they have no right to the annates. Therefore bishops and princes are bound to punish this thievery and robbery, or prevent it, as justice demands. . . . Even if it were proposed to collect any such treasure for use against the Turks, we should be wise in future, and remember that the German nation is more fitted to take charge of it than the pope,

seeing that the German nation by itself is able to provide men enough, if the money is forth-coming. . . .

Moreover, the year has been divided among the pope and the ruling bishops and foundations in such a way that the pope has taken every other month—six in all—to give away the benefices that fall in his month. In this manner almost all the benefices are drawn into the hands of Rome, and especially the best livings and dignities. And those that once fall into the hands of Rome never come out again, even though they never again fall vacant in the pope's month. In this way the foundations come very short of their rights, and it is a downright robbery, the object of which is not to give up anything again. Therefore it is now high time to abolish the pope's months and to take back again all that has thereby fallen into the hands of Rome; for all the princes and nobles should insist that the stolen property be returned, the thieves punished, and that those who abuse their powers shall be deprived of them. If the pope can make a law on the day after his election by which he takes our benefices and livings to which he has no right, the Emperor Charles should so much the more have a right to issue a law for all Germany on the day after his coronation that in future no livings and benefices are to fall to Rome by virtue of the pope's month, but that those that have so fallen are to be freed and taken from the Romish robbers. This right he possesses authoritatively by virtue of his temporal sword.

Luther then describes other methods employed by the pope of taking livings and benefices, of raising funds by means of the pallium, commendams, the glosses or incorporations of incompatible benefices, and other measures.

Meanwhile [he continues] since this devilish state of things is not only an open robbery, deceit, and tyranny of the gates of hell, but also destroys Christianity, body and soul, we are bound to use all our diligence to prevent this misery and destruction of Christendom. If we wish to fight the Turks, let us begin here, where they are worst. If we justly hang thieves and behead robbers, why do we leave unpunished the greed of Rome, that is the greatest thief and robber that has appeared or can appear on earth, and does all this in the holy name of Christ and St. Peter? Who can suffer this and be silent about it? Almost everything that they possess has been stolen or got by robbery, as we learn from all histories. Why, the pope never bought those great possessions, so as to be able to raise well-nigh ten-hundred thousand ducats from his ecclesiastical offices, without counting his gold mines and his land. He did not inherit this wealth from Christ and St. Peter. No one gave it to him or loaned it to him. He has not acquired it by prescription. Tell me, where can he have got it? You can learn from this what their object is when the popes send out legates to collect money to be used against the Turk.

Among the reforms he proposes and sets forth in this lengthy treatise, Luther urges that the princes, nobles, and cities should promptly forbid their subjects to pay the annates to Rome and should even abolish them altogether. He sets forth the condition of affairs and the need for action in the following words:

The pope has broken the compact, and turned the annates into robbery for the harm and shame of the German nation. He gives them to his friends. He sells them for large sums of money, and founds benefices on them. Therefore, he has forfeited his right to them, and deserves punishment. In this way the temporal power should protect the innocent and prevent wrong-doing, as we are taught by St. Paul (*Romans* xiii.) and by St. Peter (*1 Peter* ii.), and even by the canon law (16 q. 7, *de Filiis*). That is why we say to the pope and his followers, *Tu ora!* "Thou shalt pray"; to the emperor and his followers, *Tu protege!* "Thou shalt protect"; to the commons, *Tu labora!* "Thou shalt work." Not that each man should not pray, protect, and work; for if a man fulfils his duty, that is prayer, protection, and work; but every man must have his proper task.

Since, by means of those Romish tricks, commendams, coadjutors, reservations, expectations, pope's months, incorporations, unions, palls, rules of chancellery, and other such knaveries, the pope takes unlawful possession of all German foundations, to give and

sell them to strangers at Rome, profiting Germany in no way, so that the incumbents are robbed of their rights, and the bishops are made mere ciphers and anointed idols; and thus, besides natural justice and reason, the pope's own canon law is violated; and things have come to such a pass that prebends and benefices are sold at Rome to vulgar, ignorant asses and knaves, out of sheer greed, while pious, learned men have no profit by their merit and skill, whereby the unfortunate German people must needs lack good, learned prelates and suffer ruin;—on account of these evils the Christian nobility should rise up against the pope as a common enemy and destroyer of Christianity, for the sake of the salvation of the poor souls that such tyranny must ruin. They should ordain, order, and decree that henceforth no benefice shall be drawn away to Rome, and that no benefice shall be claimed there in any fashion whatsoever; and after having once got these benefices out of the hands of Romish tyranny, they must be kept from them, and their lawful incumbents must be reinstated in them to administer them as best they may within the German nation. And if a courtling come from Rome, he should receive the strict command to withdraw, or to leap into the Rhine, or whatever river be nearest, and to administer a cold bath to the interdict, seal and letters and all. Thus those at Rome would learn that we Germans are not to remain drunken fools forever but that we, too, are become Christians, and that as such we will no longer

suffer this shameful mockery of Christ's holy name, that serves as a cloak for such knavery and destruction of souls, and that we shall respect God and the glory of God more than the power of men.

It should be decreed by an imperial law that no Episcopal cloak and no confirmation of any appointment shall, for the future, be obtained from Rome. The order of the most holy and renowned Nicene Council must again be restored, namely that a bishop must be confirmed by the two nearest bishops or by the archbishop. . . .

Let it be decreed that no temporal matter shall be submitted to Rome, but that all shall be left to the jurisdiction of the civil authorities. This is part of their own canon law, though they do not obey it. . . . For all countries suffer unbearable damage by this practice of settling such matters at Rome, since it involves great expense; and, besides this, the judges at Rome, not knowing the manners, laws, and customs of other countries, frequently pervert the matter according to their own laws and their own opinions, thus causing injustice to all parties. Besides this, we should prohibit in all foundations the grievous extortion of the ecclesiastical judges. They should only be allowed to consider matters concerning faith and good morals; but matters concerning money, property, life, and honour should be left to the temporal judges. Therefore the temporal authorities should not permit excommunication or expulsion except in matters of faith and righteous living. . . .

Henceforth no reservations should be valid and no benefices should be appropriated by Rome, whether the incumbent die there, or there be a dispute, or the incumbent be a servant of the pope or of a cardinal; and all courtiers should be strictly prohibited and prevented from causing a dispute about any benefice so as to cite the pious priests, to trouble them, and to drive them to pay compensation. And if, in consequence of this, there comes an interdict from Rome, let it be despised, just as if a thief were to excommunicate any man because he would not allow him to steal in peace. . . .

The cases reserved (*casus reservati*) should be abolished, by which not only are the people cheated out of much money, but, besides, many poor consciences are confused and led into error by the ruthless tyrants, to the intolerable harm of their faith in God. . . .

The terrible oaths must be abolished which bishops are forced, without any right, to swear to the pope, by which they are bound like servants. . . . Is it not enough that they oppress us in goods, body, and soul by all their mad laws, by which they have weakened faith and destroyed Christianity? But must they now take possession of the very persons of bishops, with their offices and functions, and also claim the investiture, which used formerly to be the right of the German emperors, and is still the right of the king in France and other kingdoms? This matter caused many wars and disputes with the emperors until

the popes impudently took the power by force, since which time they have retained it, just as if it were only right for the Germans, above all Christians on earth, to be the fools of the pope and the Holy See, and to do and suffer what no one else would suffer or do. Seeing then that this is mere arbitrary power, robbery, and a hindrance to the exercise of the bishop's ordinary power, and to the injury of poor souls, therefore it is the duty of the emperor and his nobles to prevent and punish this tyranny.

The pope should have no power over the emperor, except to anoint and crown him at the altar, as a bishop crowns a king; nor should that devilish pomp be allowed that the emperor should kiss the pope's feet, or sit at his feet, or, as it is said, hold his stirrup or the reins of his mule, when he mounts to ride. Much less should he pay homage to the pope or swear allegiance, as is impudently demanded by the popes, as if they had a right to it. . . .

It is not meet that the pope should exalt himself above temporal authority, except in spiritual matters, such as preaching and absolution. In other matters, he should be subject to it, according to the teaching of St. Paul (*Romans* xiii.) and St. Peter (*1 Peter* iii.), as I have said above. . . .

It is absurd and puerile for the pope to boast for such blind, foolish reasons, in his decretal *Pastoralis*, that he is the rightful heir to the empire, if the throne be vacant. Who gave it to him? . . . It disgusts me that we have to read and teach such impudent,

clumsy, foolish lies in the canon law, and, moreover, to take them for Christian doctrine, while in reality they are mere devilish lies. Of this kind, also, is the unheard-of lie touching the "Donation of Constantine." . . . The pope wishes to rule an empire, and to remain a pope. . . .

The pope must withdraw his hand from the dish, and on no pretence assume royal authority over Naples and Sicily. He has no more right to them than I, and yet claims to be the lord—their liege lord. They have been taken by force and robbery, like almost all his other possessions. Therefore, the emperor should grant him no such fief, nor any longer allow him those he has, but direct him instead to his bibles and prayer books, so that he may leave the government of countries and peoples to the temporal power, especially of those that no one has given him. Let him rather preach and pray. The same should be done with Bologna, Imola, Vicenza, Ravenna, and whatever the pope has taken by force and holds without right in the Ancontine territory, in the Romagna, and other parts of Italy. . . .

The civil law, too, good God! What a wilderness it has become! It is indeed much better, more skilful, and more honest than the canon law, of which nothing is good but the name.[1] Still, there is far

[1] Luther denied the binding validity of the canon law, for he felt that it exhibited an incongruous confusion of matters spiritual and temporal by attaching a legal sanction to whatever the authorities of the church had declared to be

too much of it. Surely good governors, in addition to the Holy Scriptures, would be law enough, as St. Paul says: "Is it so, that there is not a wise man among you? no, not one that shall be able to judge between his brethren?"[1] I think also that the common law and the usage of the country should be preferred to the law of the empire, and that the law of the empire should only be used in cases of necessity. And would to God that, as each land has its own peculiar character and nature, they could all be governed by their own simple laws, just as they were governed before the law of the empire was devised, and as many are governed even now! Elaborate and far-fetched laws are only burdensome to the people, and a hindrance rather than a help to business. But I hope that others have thought of this, and considered it to better purpose than I can. . . .

I know full well that the Romish mob will object and loudly pretend that the pope took the Holy Roman Empire from the Greek Emperor and gave it to Germany, for which honour and favour he is supposed to deserve submission and thanks and all other kinds of returns from the Germans. For this

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binding on the conscience. He denounced as brutal and unchristian the doctrine that a violation of the canons entails the loss of salvation. Geffcken: *Church and State*, i., 303.

It was but natural that, feeling as he did, he should cast a copy of these laws into the flames when he burned the papal bull excommunicating him.

[1] *1 Corinthians* vi., 5.

reason they will perhaps assume to oppose all attempts to reform them, and will let no regard be paid to anything but those "donations" of the Roman Empire. This is also the reason why they have so arbitrarily and proudly persecuted and oppressed many good emperors, so that it were pity to tell, and with the same cleverness have they made themselves lords of all the temporal power and authority, in violation of the Holy Gospel; and accordingly I must speak of this matter also.

There is no doubt that the true Roman Empire, of which the prophets (*Numbers* xxiv., 24 and *Daniel* ii., 44) spoke, was long ago destroyed, as Balaam clearly foretold, saying: "And ships shall come from the coast of Chittim and shall afflict Asshur, and shall afflict Eber, and he also shall perish forever."[1] And this was done by the Goths, and more especially since the empire of the Turks was formed, about one thousand years ago, and so gradually Asia and Africa were lost, and subsequently France, Spain, and finally Venice arose, so that Rome retains no part of its former power.

Since, then, the pope could not force the Greeks and the emperor at Constantinople, who is the hereditary Roman emperor, to obey his will, he invented this device to rob him of his empire and title, and to give it to the Germans, who were at that time strong and of good repute, in order that they might take the power of the Roman Empire

[1] *Numbers* xxiv., 24.

and hold it of the pope; and this is actually what happened. It was taken from the emperor at Constantinople, and the name and title were given to us Germans, and therewith we became subject to the pope, and he has built up a new Roman Empire on the Germans. For the other empire, the original, came to an end long ago, as said above.

Thus the Roman See has got what it wished. Rome has been taken possession of, and the German emperor driven out and bound by oaths not to dwell in Rome. He is to be Roman emperor and nevertheless not to dwell in Rome, and, moreover, always to depend on the pope and his followers, and to do their will. We are to have the title, and they are to have the lands and the cities. For they have always made our simplicity the tool of their pride and tyranny, and they consider us as stupid Germans, to be deceived and fooled by them as they choose. . . .

Now, although the pope has violently and unjustly robbed the true emperor of the Roman Empire, or its name, and has given it to us Germans, yet it is certain that God has used the pope's wickedness to give the German nation this empire and to raise up a new Roman Empire, that exists now, after the fall of the old empire. We gave the pope no cause for this action, nor did we understand his false aims and schemes; but still, through the craft and knavery of the popes, we have, alas, all too dearly, paid the price of this empire with incalculable bloodshed, with the loss of our liberty, with the robbery of our

wealth, especially of our churches and benefices, and with unspeakable treachery and insult. We have the empire in name, but the pope has our wealth, our honour, our bodies, lives and souls, and all that we have. This was the way to deceive the Germans, and to deceive them by shuffling. What the popes wished was to become emperors; and, as they could not do this, they put themselves above the emperors.

Since, then, we have received this empire through God's providence and the schemes of evil men, without our fault, I would not advise that we should give it up, but that we should govern it honestly, in the fear of God, as long as He is pleased to let us hold it. For, as I have said, it is no matter to Him how a kingdom is come by, but He will have it duly governed. If the popes took it from others dishonestly, we at least did not come by it dishonestly. It was given to us through evil men, under the will of God, to Whom we have more regard than the false intentions of the popes, who wished to be emperors and more than emperors, and to fool and mock us with the name.

The King of Babylon obtained his kingdom by force and robbery; yet God would have it governed by the holy princes Daniel, Hananiah, Azariah, and Mishael. Much more, then, does He require this empire to be governed by the Christian princes of Germany, though the Pope may have stolen, or robbed, or newly fashioned it. It is all God's ordering, which came to pass before we knew of it.

Therefore the pope and his followers have no reason to boast that they did a great kindness to the German nation in giving them this Roman Empire; first of all, because they intended no good to us in the matter, but only abused our simplicity to strengthen their own power against the Roman emperor at Constantinople, from whom, against God and justice, the pope has taken what he had no right to.

Secondly, the pope sought to give the empire, not to us, but to himself, and to become lord over all our power, liberty, wealth, body, and soul, and through us over all the world, if God had not prevented it, as he plainly says in his decretals, and has tried, with many mischievous tricks, in the case of many German emperors. Thus we Germans have been taught in plain German: whilst we expected to become lords, we have become the servants of the most crafty tyrants. We have the name, title, and arms of the empire, but the pope has its treasure, authority, law, and freedom. Thus, whilst the pope eats the kernel, he leaves us the empty shells to play with.

Now may God help us (Who, as I have said, assigned us this kingdom through crafty tyrants, and charged us to govern it) to act according to our name, title, and arms, and to secure our freedom, and thus let the Romans see at last what we have received of God through them. If they boast that they have given us an empire, well, be it so, by all means; then let the pope give up Rome, all he has of the empire,

and free our country from his unbearable taxes and robberies, and give back to us our liberty, authority, wealth, honour, body and soul, rendering to the empire those things that are the empire's, so as to act in accordance with his words and pretences. . . .

Let the German emperor be a true, free emperor, and let not his authority or his sword be overborne by these blind pretences of the pope's sycophants, as if they were to be exceptions, and be above the temporal sword in all things.

Writing against the Turks nearly a score of years later,[1] Luther declares that the civil authority is under obligations to restrain those who, without right, begin war and rob and murder. This kind of vengeance is not forbidden, for St. Paul says that rulers are avengers of God[2]; that is, instituted and commanded by Him. Vengeance which is not taken up through the proper civil authorities or by their direction is forbidden to Christians. These contentions he elucidates as follows:

As to the claim that the faith should not be protected by the sword, but people should suffer, as Christ and the apostles, it is true that those who are

[1] *Unterricht der Visitatoren an die Pfarrherren im Churfürstenthum Sachsen* (1538). Walch ed., x., 1671, 1672.

[2] *Romans* xiii., 4.

not rulers should suffer, each for himself, and not defend themselves, after the example of Christ. But the civil authorities should protect their subjects against wrongful violence, whether offered on account of faith or for other reason. And inasmuch as the civil power is to honour good works and punish the wicked, it is likewise to restrain and check those who seek to deprive the people of divine worship, good governmental administration, law, and justice. Therefore we are under obligations to defend ourselves against the Turks, who seek not only to desolate our country and ravish and kill our women and children, but also to take away the law of the land, divine worship, and all good order, so that the survivors would not be secure in life, nor could the children be raised in discipline and virtue.

Were there no Christian faith, it would be necessary nevertheless that we should fight the Turks for the sake of wife and child. For we were better dead than to witness and suffer such shame as would be ours. For the Turks drive people to market, buy and sell them, and treat them like cattle, whether man or woman, young or old, maid or wife. The clergy should exhort the people to pray God to protect us against such fanatics and tyrants, and instruct the people that it is a real divine service to fight against such a foe, at the bidding and under the direction of the civil government.

In another writing, Luther maintains that every judge is under obligation to judge in accordance

with the laws of his land. The Mosaic code, for example, would not apply to the German nation.[1] Luther thus stood (as the extracts we have given from his writings show) for a united Germany, with a government by the Germans and for the Germans, as against all foreign interference or domination. His is one of the strongest pleas in the history of the world for the government of the people of one race by their own rulers, without hindrance or dictation from without. Credit given to other writers on this subject belongs to him.[2] His *Appeal to the German Nobility* was an appeal to the German nobles to resist foreign interference, and to govern their

[1] *Bedenken D. M. Luthers, dass man nach Mosis Recht nicht urtheilen noch richten solle.* Walch ed., x., 356.

[2] Mr. Willoughby asserts that outwardly, in its relation with other powers, the state appears to Bodin as independent and free from external legal compulsion of any sort whatever. The logical result of this position was, of course, to render the conception of sovereignty necessarily territorial in character, that is, as exercisable over a definite portion of the world's surface. . . . The epoch-making character of Bodin's work is seen, continues Mr. Willoughby, when we consider the conceptions that had prevailed prior to his time. On the one hand the old idea of the universality of the Roman Empire, and the alleged supremacy of the church in matters temporal had rendered impossible the idea of sovereignty as including complete state independence. Willoughby: *An Examination of the Nature of the State*, pp. 186, 187. But Luther's writings show he had this conception or idea before Bodin.

own lands. The fact must not be overlooked that the time was ripe for this appeal against foreign interference, dictation, and taxation. The Imperial Diet had not only considered the subject again and again, but drew up formal statements concerning it. Emperor Maximilian himself, at the Diet held at Augsburg in 1510, for example, caused a more detailed and distinct statement of the grievances of the German nation to be drawn up, than had previously existed. He convoked a council, of which the church stood in such great need, and declared that, although Rome delayed, he would not.[1]

Luther's appeal was a plea on behalf of a people of one race to become united in civil government and establish a national state. It was, indeed, the first definite call for a united Germany.[2] While it did not lead to the establishment of a unitary, or even a closely confederated, government of the German people, it did result in the throwing off of the foreign yoke. The power of the electors and of the princes in their respective territories became stronger and more centralised, both in political and ecclesiastical affairs. Had the German people at that time stood together, united politically, for a common government,

[1] Ranke: *History of the Reformation in Germany*, i., 270.

[2] Lindsay: *Luther and the German Reformation*, pp. 107, 108.

the later history of Europe would have been vastly different.

Luther's appeal was for a modern state; not the ideal world-empire,[1] but a sovereign, unitary, territorial state of one people,—the national state, as the most natural, the most homogeneous, the most stable, and the most successful. The Florentine Machiavelli said, centuries ago: "We owe to Rome that we are become divided and factious, which must of necessity be our ruin, for no nation was ever happy or united unless under the rule of one commonwealth or prince, as France and Spain are at this time."[2]

A modern writer expresses the idea and the need of the national state in language none too strong when he says: "Every great people which is fit to become a nation and a state, has its own political point of view and its own special function as a state, and this cannot be fulfilled unless the nation gives to the state the impress of its own character. This is what is meant by the natural right of a nation to a national constitution (*volksthümliche Verfassung*)."[3]

It was universally felt in Luther's day that "it was high time that Germany should be consid-

[1] See Bluntschli: *The Theory of the State*, p. 32.
[2] Lindsay: *Luther and the German Reformation*, p. 119.
[3] Bluntschli: *The Theory of the State*, p. 101.

ered as a nation with one national language, common national usages, and national laws which should preserve individual rights and liberties unknown to the Roman law, which was superseding the old usages."[1] The peasants, in their more elaborate manifestoes and demands, urged, among other things, an organised imperial administration, with communal courts ascending to an imperial court. They sought a uniform system of coinage, weights and measures, and taxes and customs dues throughout the empire. In every case, the emperor was looked upon as lord-paramount.[2] The awakened feeling of German nationality was driven into hostility to an institution whose title and history bound it to the centre of foreign tyranny. "After exulting for seven centuries in the heritage of Roman rule, half of the nation cherished again the feeling with which their ancestors had resisted Julius Cæsar and Germanicus."[3]

Had Charles V stood for religious liberty, it is not too much to say that the government of Germany would have become in his day a strong confederation, if not a compact monarchy; for the Imperial Diet held at Worms in 1521, before

[1] Lindsay: *Luther and the German Reformation*, p. 114.
[2] Lindsay: *A History of the Reformation*, i., 333.
[3] Bryce: *The Holy Roman Empire*, p. 385.

which Luther made his plea for freedom of faith, had a new plan presented for the establishment of a central council of administration or government; for this was the era, Mr. Bryce tells us, of the first conscious feeling of German nationality as distinct from the imperial. Driven in on all sides, with Italy and the Slavic lands and Burgundy hopelessly lost, Teutschland learned to separate itself from Welschland. The empire became the representative of a narrower but more practical national union, and was undoubtedly sinking into a merely German power.[1]

If there had been no Holy Roman Empire [says Mr. Sidgwick], if the German king had had no further ambition than to be king of Germany, if he had not had his attention continually distracted and his resources continually exhausted by Italian adventures—I see no clear reason why Germany should not have attained national unity under a king, like France and Spain, at the close of the Middle Ages; and at any rate, it would not have been split up into a bewildering profusion of principalities, great and small, held together by the imperfect bond of a so-called empire, as we find it when modern history begins.[2]

It may be said, with stronger reason, that if Frederick the Wise, the Elector of Saxony, had

[1] Bryce: *The Holy Roman Empire*, pp. 368–370.
[2] Sidgwick: *The Development of European Polity*, p. 196.

accepted the imperial crown when proffered to him, as history assures us it was at the time of the election of Charles V in 1519,[1] the German people would have become a united, sovereign, and independent nation generally accepting the political doctrines maintained by the great reformer; for Frederick was friendly to the new theories of civil government, as he was at the same time most kindly disposed towards the masses of the people and much beloved by them. As emperor his influence would have been very great, both as to the sovereignty of the national state and the inalienable civil and religious rights of the individual.

It was not Luther, nor was it his principles of freedom of conscience and civil and religious liberty that put an end to all prospects for a united people politically; nor was it popular opposition to the new faith. Herr von Miltitz, a Saxon nobleman, deputed by the pope in 1519 to endeavour to secure submission and a promise of silence from Luther, himself acknowledged to the reformer that throughout his journey in Germany he had found on an average three voices to one in his favour; and this was only two years after Luther's first appearance in the public eye as a *protestant* against certain teachings and

[1] Lindsay: *Luther and the German Reformation*, p. 115.

practices of Rome. At the time of Luther's death (1546), Germany was almost entirely Protestant. According to a report made by the Venetian ambassador in 1557, seven tenths of the German people belonged to the Lutheran faith, two tenths to the Reformed or other sects; and one tenth only remained Roman Catholic.[1]

From this time on, a different attitude was maintained towards the emperor by the different electors and princes of the empire. To his Protestant princes and people he was merely the titular head of the nation; to the Catholics he was also the advocate and defender of their faith.[2]

It was the refusal of the emperor and some of the princes to recognise and concede to others the right of the individual conscience, and the rights of different, virtually sovereign states; it was their denial of the doctrine that the sovereignty of the state extends over every individual within its boundaries, and that it is the only institution possessing coercive authority; it was their failure or refusal to assert and maintain their own sovereignty, as against foreign ecclesiastical and civil influence and power; that put an end to the bright prospects for Germanic unity.

[1] Geffcken: *Church and State*, i., 317.
[2] Bryce: *The Holy Roman Empire*, p. 385.

Jealousies between the princes and the emperor, rivalries among the different princes and electors, hostility between the secular and ecclesiastical members of the empire, oppression of the weaker nobility by the stronger, were elements in a situation rendered still more complex by differences of local governments and aims. Concerning these various and repugnant forms of civil policy in the several states which composed the Germanic body, an historian says:

It is no easy matter to render the union of independent states perfect and entire, even when the genius and forms of their respective governments happen to be altogether similar. But in the German empire, which was a confederacy of princes, of ecclesiastics, and of free cities, it was impossible that they could incorporate thoroughly. The free cities were small republics, in which the maxims and spirit peculiar to that species of government prevailed. The princes and nobles, to whom supreme jurisdiction belonged, possessed a sort of monarchical power within their own territories, and the forms of their interior administration nearly resembled those of the great feudal kingdoms. The interests, the ideas, the objects of states so differently constituted cannot be the same. Nor could their common deliberations be carried on with the same spirit, while the love of liberty, and attention to commerce, were the reigning principles in the cities, while the desire of

power, and ardour for military glory, were the governing passions of the princes and nobility.[1]

Luther certainly cannot be censured for proposing and urging principles recognised and advocated by every enlightened people in the world to-day, whatever may have been the course of history in and after his day. In spite of the fact that it required more than three centuries to bring Germany back again to this point, Luther's appeal of 1520 eventually won lasting recognition.[2] There was a golden opportunity in his day for the sovereignty of the state in the modern sense; but the Roman See continued to be sovereign, as against civil power, in those states of Germany where the papal supremacy was recognised by the ruling secular or ecclesiastical princes. Had it been dependent on a popular vote of the people of Germany, of and by themselves, probably at any time after Luther's appearance at the Diet of Worms in 1521, no such foreign interference, dictation, or consideration—ecclesiastical or otherwise—would have been recognised or tolerated.

[1] Prescott: *Robertson's History of the Reign of the Emperor Charles V*, i., 213, 214.

[2] It is strange that it required these centuries to develop the German Empire, when it is remembered that the "Teuton really dominates the world by his superior political genius." Burgess: *Political Science and Constitutional Law*, i., 4.

CHAPTER VI

THE RIGHT OF REFORM AND REVOLUTION

AN essential element of sovereignty, it has been noted, is the right to command and the power to enforce the command. The state is not sovereign unless it is able to crush rebellion, revolution, or lawlessness of any kind within its bounds. The state, indeed, "cannot exist without having the power of compelling those who oppose its aims to surrender their will to the law."[1] But the right of a people or of a state to institute and establish a form of government carries with it the right to alter or amend that government. This is the foundation principle of a free people. The first President of the United States said in his Farewell Address in 1796:

> The basis of our political systems is the right of the people to make and alter their constitutions of government. But the constitution which at any time exists, till changed by an explicit and authentic

[1] Geffcken: *Church and State*, i., 73.

act of the whole people, is sacredly obligatory upon all. The very idea of the power and right of the people to establish government presupposes the duty of every individual to obey the established government. All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency.[1]

Alterations and changes in a government made in accordance with the spirit of a state's constitution, by its representatives in regular or constitutional manner, may be properly considered reforms. A revolution implies more than a change of administration, or a change of policy on the part of the government. It involves more than an amendment of the constitution. It involves nothing less than an overthrow, or fundamental change, in spirit as well as in form, of an existing constitution. It is the renunciation of one government and the substitution of another. Where reforms willed by the people are denied by an existing government, or prohibited by an existing constitution, the only alternative by

[1] Bryan: *The World's Famous Orations*, viii., 95. Bluntschli: *The Theory of the State*, p. 476, note.

which that will of the people may be carried into effect is a revolution. There is a right of revolution, but it is rare.[1] It may be justified only when "the state itself is in danger of perishing, or if vital interests of the public weal are threatened."[2] Driven to the last resort, a people may forcibly overthrow an existing government, where they cannot reform it in accordance with their will, and set up a new constitution, with a new

[1] A distinction must be drawn at the outset between the absolutist views of some peoples and ages on the subject of government and the non-absolutist views of others. The absolutist character of the two centuries following Luther, as Mr. Bluntschli says, implied a theory of the state which based it upon the power of a superior. Louis XIV actually identified himself with the state ("l'état c'est moi"). This was the fundamental idea of the absolutist theory of the state which, prepared by Bodin and Hobbes, was developed theologically and given every variation. In this theory, the rights and liberties of the governed were altogether left out of consideration. "Only the prince and the government officials had any value, and the subjects were looked on as a mere passive mass, to be managed and governed from above, but with no claim to manage themselves, or to share the government, or to control the conduct of their rulers." Bluntschli: *The Theory of the State*, pp. 64, 65.

The theory of papal absolutism, and the arguments for imperial absolutism which followed closely in its wake, though they seem at first view so genuinely mediæval, are really among the first doctrines leading away from the Middle Ages. Gierke: *Political Theories of the Middle Age*, p. 5.

[2] Bluntschli: *The Theory of the State*, p. 477.

form of government; for "necessity knows no law."[1]

Luther clearly recognised a right of reform in accordance with the constitutional principles of a government.[2] In his stirring *Appeal to the German Nobility* he has distinctly in view an orderly resistance conducted by the lawful leaders of the nation.[3] Attention has already been called to his proposals for various specific changes in the laws of the land. He maintained that if the laws binding a ruler are disregarded and violated, he is subject to account and dismissal from office.[4] The pope himself may be deposed. Lands unlawfully held and claimed by him should be taken from him. Disputes and disagreements between emperor and electors as to their respective rights and powers are questions of constitutional law

[1] The views of another renowned German on this general subject will be found reflected in Goethe's *Götz von Berlichingen mit der eisernen Hand.*

[2] Failure to distinguish between reform and revolution leads Lord Acton to say of him: "The great fact which we have to recognise is that with all the intensity of his passion for authority he did more than any single man to make modern history the development of revolution." *Lectures on Modern History*, p. 105.

[3] Hay: *Luther the Reformer*, p. 114.

[4] Locke follows Luther's principle that public service is a trust that, when abused, may be revoked by those granting it.

and therefore for the consideration of the jurists.[1]

Luther maintained that, under certain circumstances, even as to temporal matters, self-defence is the right of the Christian, and especially so in the case of tyranny.[2] When the prince is in the wrong, the subject is not under obligation to support him and fight for him. If the emperor himself violate the constitution and do not perform his duty in accordance with his oath, let him be formally deposed by the imperial electors[3]; but, until and unless formally and legally deposed, he is to be respected and obeyed as emperor.[4] As an evidence of his personal willingness to obey

[1] *Brief vom* 15 *Jan.*, 1531, *an Wenceslaus Link in Nürnberg.* Walch ed., xxi a., 1616.

Schrift vom 15 *Feb.*, 1531, *an Lazarus Spengler, Geheimer Rath zu Nürnberg, ob man dem Kaiser widerstehen solle.* Walch ed., x., 570.

[2] Dunning: *History of Political Theories from Luther to Montesquieu*, p. 14.

[3] This right the electors not only claimed, but actually exercised in several instances. In the year 1298 they deposed Adolphus of Nassau, and elected Albert of Austria to his place. Wenceslaus was deposed by them at the opening of the fifteenth century, and Rupert, the Elector Palatine, elected emperor in his stead. This deposition was pronounced in the name and by the authority of the electors, and confirmed by certain prelates and barons of the empire who were present. Goldasti: *Constit.*, i., 379. Prescott: *Robertson's History of the Reign of the Emperor Charles V*, i., 410, 411.

[4] *Brief an den Kurfürsten Johannes vom* 6 *März*, 1530. Walch ed., x., 532 *et seq.* Bluntschli: *Geschichte der neueren*

an unfriendly ruler, Luther declared his readiness to appear personally before the emperor, if the latter absolutely demanded it.[1]

To Luther, the right of the government itself to engage in war under certain conditions is unquestioned. In a reply to Prierias, written in 1520, Luther says:

> If the fury of the Romanists continue, there seems to me to be no remedy left but that the emperor, kings, and princes, girding on their armour, attack these pests of the earth, and decide the matter, not by words but with the sword. If we punish thieves with the axe, heretics with fire, why do we not rather attack these masters of perdition, these cardinals, these popes, and the whole rabble of the Roman Sodom, and wash our hands in their blood, and thus free ourselves from the common and most dangerous conflagration of all.[2]

In his tract on *Secular Authority*,[3] Luther asserts that all the saints have carried the sword from the beginning of the world,—Adam, with his

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Statswissenschaft, Allgemeines Statsrecht und Politik seit dem 16 Jahrhundert bis zur Gegenwart, p. 70.

[1] *Brief an denselben, vom 28 Nov.*, 1529. Bluntschli: *Geschichte der neueren Statswissenschaft, Allgemeines Statsrecht und Politik seit dem 16 Jahrhundert bis zur Gegenwart*, p. 70.

[2] Mackinnon: *A History of Modern Liberty*, ii., 62, 63.

[3] *Von weltlicher Oberkeit, wie weit man ihr Gehorsam schuldig sei* (1523). Weimar ed., 11 Band, 229 *et seq.*

descendants, and Abraham carried it. Samuel, the holy prophet, slew Agag, the king, and Elijah slew the prophets of Baal. Moses, Joshua, the Children of Israel, Samson, David, and all the kings and princes in the Old Testament carried it; Daniel and his associates in Babylon, Joseph in Egypt, etc. If it be asserted that the Old Testament is abrogated and is no longer in force, and that such examples cannot be cited authoritatively to the Christian, I answer, that is not so. There then arises the question as to the correct understanding of the words of Christ: "Resist not evil."[1] It is this. A Christian should be so skilled and qualified as to suffer everything evil and unjust, and not avenge himself, not protect himself before the courts; but that in all things he should not require temporal authority and law for himself. But for others, he may and should seek punishment, justice, protection, and help, and do in connection therewith whatever he may be able. The civil authorities should also assist and protect him either on their own initiative or that of others, without complaint or action on his own part. Where they do not do that, let him permit himself to be oppressed and abused, and withstand no evil, as Christ's words declare.

As to whether jailers, executioners, jurists,

[1] *Matthew* v., 39.

advocates, and such like may be Christians and have a holy estate, Luther maintains that the civil power and the sword are a divine service, so that all that also must be divine service that is necessary to the civil power in wielding the sword. [It must ever be that he who apprehends, accuses, and destroys the wicked, protects, justifies, defends, and rescues the good.] Whenever, therefore, one is not seeking for himself, but is helping the maintenance of law and order, that the wicked may be restrained, he may do so without danger, and may use it as a business and live thereon. For love of neighbour does not consider its own and does not see how large or small, but how useful and necessary any work may be to the neighbour or to the community.

Luther declares further in this treatise that no prince should wage war against his overlords, as the king or emperor, or other feudal lords, but should take what comes. For the authorities should not be forcibly withstood, but with a recognition of the truth. If the adversary be an equal or an inferior, or a foreign power, first seek right and peace, as Moses taught the children of Israel. If the adversary is not willing to do this, then do your best and protect yourself with force against force, as Moses well expresses it in *Deuteronomy* xix., 10 *et seq.* And in such a matter, you

are not to consider your own things and how you may remain lord, but should consider your subjects, to whom you owe protection and assistance. The subjects are under obligation to follow and stake body and estate herein. For in such a case, each one must hazard his property and himself for the sake of others. In such a war it is Christ-like and a work of love to destroy the enemy, plunder, burn, and do everything that is injurious, until they are overcome, according to the course of war. But you must guard against sin, and not violate wives and maidens, and when the enemy is overcome, grant grace and peace to those who surrender and submit. But when a prince is in the wrong, his subjects are not under obligations to follow him, for no one is obliged to do anything against the right; but we must obey God, who desires to have the right, rather than men.[1] When the subjects do not know and cannot learn by possible industry whether the prince is in the right or not, they may then follow him without endangering their souls.[2]

[1] *Acts of the Apostles* v., 29.

[2] *Von weltlicher Oberkeit, wie weit man ihr Gehorsam schuldig sei* (1523). Weimar ed., 11 Band, 229 *et seq.* *Rathschlag D. Luthers, Melanchthons und Bugenhagens, ob ein Fürst seine Unterthanen wider des Kaisers oder anderer Fürsten Verfolgung, um des Glaubens willen, mit Krieg schützen möge* (1523). Walch ed., x., 572 *et seq.*

Luther cannot be quoted in support of absolute tyranny, or unconstitutional acts of governments or rulers. One sees in him the manly Teutonic sense of law and liberty, and it is a mischievous misuse of his authority for absolutists falsely to misapply his pious veneration of God's power, that is also to be seen in civil authority, to servile subjection under every tyranny.[1]

Lawlessness and anarchy, however, are to be sternly suppressed by the government. In writing on riotous disturbances,[2] he maintains that the place of law and order is not to be taken or filled by insurrection and violence. Insurrection has no reason, and generally injures the innocent more than the guilty. No lawless violence is right, however right the object it may be seeking. There invariably results more injury than betterment, as expressed in the maxim: "*Aus Uebel wird Aergeres.*" For this reason rulers and the sword are instituted, to punish the wicked and protect the good, that lawless insurrection may be guarded against, as St. Paul says in *Romans* xiii., 4, and Peter in *1 Peter* ii., 13, 14. The rioter

[1] Bluntschli: *Geschichte der neueren Statswissenschaft, Allgemeines Statsrecht und Politik*, p. 72.

[2] "*Aufruhr*," the German word used by Luther in this connection, is difficult to translate into any one English equivalent. It is variously translated uproar, tumult, disorder, insurrection, mutiny, rebellion, revolt, riot, sedition.

does not distinguish between the good and the bad, but strikes into the crowd as it stands, and cannot avoid doing shameless wrong. Therefore, honour the authorities. So long as they do not act and command, the citizen should remain quiet with hand, mouth, and heart, and hold himself aloof. He may influence the proper authorities to take action, if he can. But if they will not, neither may he. I hold, argues Luther, and always will hold with the people who suffer from insurrection, howsoever wrongful a cause it may have, and against the people who participate in it, howsoever rightful a cause it may have, because lawless insurrection or revolt cannot but involve innocent blood or other loss. Moreover, sedition is prohibited by God, who says in Moses: "That which is altogether just shalt thou follow"[1]; likewise, "To me belongeth vengeance, and recompense."[2] Therefrom comes the true maxim: "*Wer wiederschlägt, der ist unrecht*"; and again, "*Niemand kann sein eigner Richter sein.*" Sedition is nothing else than judging and avenging one's self. God cannot suffer that, and therefore it is not possible but that sedition will ever make conditions worse, because it is against God and God is not with it.[3]

[1] *Deuteronomy* xvi., 20. [2] *Deuteronomy* xxxii., 35.

[3] *Eine treue Vermahnung zu allen Christen, sich zu hüten vor*

This is a strong and stirring appeal to do everything orderly, constitutionally, and regularly; and these principles continued unchanged throughout Luther's entire life. He was in sympathy with many—though not all—of the peasants' aims, when they rose in their insurrection. He urged the princes and the lords to consider the condition of the lower classes and make their life more bearable; but when the peasants, in their violence, by fire and sword, engaged in wild, wanton, and lawless destruction of life and property, he sternly opposed and denounced their lawlessness, and urged the princes to suppress the riots and the rioters at all cost. The murderer and the common criminal, he asserted, fully recognise government at large, but forcibly wrong an individual; but the rioter, the anarchist, recognises no government and respects no authority, but strikes at the very roots of civil law and order.

The criticism by various writers of Luther's appeal to the German princes to suppress the riots and lawlessness—murder, pillage, destruction of property, and the recognition of no individual or governmental rights—of the peasants in their uprisings, is not well founded. One writer, for example, declares that in his attitude towards the

Aufruhr und Empörung (1522). Weimar ed., 8 Band, 670 *et seq.*

peasants, Luther was "outrageous" and "inconsistent."[1] Another says: "When all is said that can reasonably be said in explanation of his action, we cannot help feeling that the language of this pamphlet[2] is an ineffaceable stain on Luther, which no extenuating circumstances can wipe out. It remains the greatest blot on his noble life and career."[3]

As a matter of fact, Luther cannot be justly criticised for his position in this matter, for his attitude, properly understood, is the unquestioned attitude of the modern state, and is recognised as absolutely necessary to the public peace, order, and safety and the protection of all rightful interests. Two wrongs do not make a right; and wrongs, where they exist, are to be righted orderly and lawfully. No government can stand, without maintaining law and order and suppressing violence and lawlessness. The very life of the state—as well as that of society itself—is involved.

Luther himself explained his attitude, and it should be carefully noted.[4] He says that the maxims dealing with mercy belong to the kingdom

[1] Mackinnon: *A History of Modern Liberty*, ii., 107.

[2] *Wider die räuberischen und mörderischen Rotten der Bauern* (1525). Weimar ed., 18 Band, 344 *et seq.*

[3] Lindsay: *Luther and the German Reformation*, p. 186.

[4] *Ein Sendbrief von dem harten Büchlein wider die Bauern* (1525). Weimar ed., 18 Band, 375 *et seq.*

of God and among Christians, not to the kingdom of the world, which is the instrument of godly wrath upon the wicked. The instrument in the hand of the state is not a garland of roses or a flower of love, but a naked sword. As I declared at the time, he says, so declare I yet: Let every one who can, as he may be able, cut, stab, choke, and strike the stiff-necked, obdurate, blind, infatuated peasants; that mercy may be shown towards those who are destroyed, driven away, and misled by the peasants; that peace and security may be had. It is better to mercilessly cut off one member rather than lose the entire body, through fire or plague. Furthermore, the insurgents are notoriously faithless, perjured, disobedient, riotous thieves, robbers, murderers, and blasphemers, so that there is not one of them but has well deserved death ten times over without mercy. If my advice had been followed in the very beginning, and a few lives had been taken, before the insurrection assumed such large proportions, thousands of lives that have been lost would have been saved. The experience should make all parties involved wiser.

If it be said, he continues, that I myself teach lawlessness when I urge all who can to cut down the rioters, my reply is: My booklet was not written against common evil-doers, but

against seditious rioters. There is a marked distinction between such a one and a murderer or robber or other ordinary criminal; for a murderer or similar criminal lets the head and civil authority itself stand, and attacks merely its members or its property. He, indeed, fears the government. Now, while the head remains, no individual should attack the murderer, because the head (civil authority) can punish him, but should wait for the judgment and sentence of that authority to which God has given the sword and the office.

But the rioter attacks the head itself, so that his offence bears no comparison with that of the murderer. In this case, there can be no delay awaiting the action and the judgment of the head, for the latter has been seized and held in check; and every one who can should hasten, without waiting for solicitation or command, and, as a faithful member, help rescue its head by stabbing, cutting, throttling. For lawless rioting is no jest, and there is no wickedness on earth comparable to it. Other wrongs are single crimes, but rioting and insurrection are a deluge of all crimes combined. Such lawlessness does not deserve judgment or mercy, whether it take place among heathen, Jews, Turks, Christians, or anywhere, but is already heard, judged, sentenced, and

delivered over to death in the hand of any and every one. But Luther reminds the rulers that, when order has been restored and the rioting suppressed, they are to show mercy not only to the innocent, but also to the guilty.

In a letter addressed to the Elector John, written more than three months before the Diet of Augsburg, of 1530, Luther states[1] that he has conferred with his friends Jonas, Pommer, and Melanchthon on the subject of the right of defence against the emperor, should he attempt to wage war on the Protestant princes and people on account of their faith. Some, perhaps, might conclude that, according to imperial or civil law, the subject would have a right to protect himself against the emperor in such a case, particularly because that ruler had bound himself under oath to respect all established liberty and not to forcibly invade the rights of the subjects.

But, according to the Scripture, it is in no way becoming for any one who wants to be a Christian to oppose the civil authority over him whether it does right or wrong. A Christian should endure violence and wrong from his ruler. For though

[1] *Von der Gegenwehr, so die Evangelischen um des Evangeliums willen mit Krieg überzogen würden. Schreiben an Churfürst Johann zu Sachsen die Gegenwehr belangend* (March 6, 1530). Walch ed., x., 532 *et seq.*

the emperor do wrong, fail in his duty, and break his oath, his imperial authority and the obedience of his subjects are not suspended, so long as the empire and the electoral princes keep and retain him as emperor and do not depose him. If an emperor or a prince break all of God's commandments, he remains nevertheless emperor or prince, and is under much higher obligation to God than to men. Were it now sufficient reason for man to resist the emperor that he does wrong, then in every case, as often as he acts against God, could he be resisted by men.

Under such conditions there would remain no authority or obedience at all in the world; because the subject or servant would present the plea that his ruler had committed a wrong against God.

But, inasmuch as the emperor remains emperor, and the prince remains prince, though he break all God's commandments, indeed even though he be a heathen; so is he the same if he break his oath and engagements, until deposed or until he ceases to be emperor. Christ's saying stands fast: "Render therefore unto Cæsar the things which are Cæsar's"[1]; and, "Honour the king."[2] For we are to be obedient subjects in all fear not only to the good and pious, but also to the wicked and

[1] *Matthew* xxii., 21. [2] *1 Peter* ii., 17.

incapable lords. In short, wrong-doing does not release authority and obedience; but the penalty will do so; that is, if the empire and the electoral princes, acting in accord, depose the emperor, that he be emperor no longer. But as long as he is unpunished and remains emperor, no one should withhold obedience or strive against him; for that is treason, rebellion, and dissension.

If the emperor, while emperor, take steps against the subjects of the empire, it is not for the princes to forcibly resist,—let every man look to himself; but if the emperor go further and seek to compel the princes to attack, persecute, kill, and drive away their subjects, on account of the Gospel, and the princes believe or know that the emperor does wrong or acts against God in the matter, then it affects their own faith and they should not obey the emperor and not consent, assist, or participate in such wrong-doing. It is enough that they leave land and people unprotected and the emperor unhindered, and say: If the emperor will annoy our subjects, as also his own, he may do so on his conscience, we cannot prevent it; but we will not assist him in it, nor will we consent to it. "We ought to obey God rather than men."[1]

In a letter written about eight months after

[1] *Acts of the Apostles* v., 29.

the famous Diet of Augsburg,[1] Luther takes occasion to deny a rumour that there has been a change in his attitude on the subject. He still maintains that full obedience is to be rendered the civil authorities, except in so far as the powers of the ruler may be subject to constitutional limitations, or he may have waived and agreed to certain stipulations or conditions, or may have exceeded his authority,—as the courts may investigate and determine. In the case in hand—as to resistance to Charles V—he declares he awaits the decision of the jurists.

In a letter written a month later,[2] Luther repeats his conviction that a Christian must not resist the powers that be; but he makes a distinction between the Christian and the citizen, that is, between the member of the body of Christ and the member of the body politic. As a citizen, he agrees with the jurists that resistance against the emperor is admissible; and, although as a theologian he will not advise any Christian to resist, he leaves it to each individual conscience to decide how he shall act.

[1] *Schrift an Lazarus Spengler, Geheimer Rath zu Nürnberg, ob man dem Kaiser widerstehen solle* (Feb. 15, 1531). Walch ed., x., 570 *et seq.*

[2] *Gegenwehr wider den Kaiser: Letter of March* 18, 1531, *to a citizen of Nürnberg.* Walch ed., x., 568 *et seq.*

The following argument appears in a document[1] written by Luther about the same time:

This is my honest advice in case the emperor were to declare war against us on account of the pope's affairs or our teaching—though I do not believe it of him as yet; that no one should let himself be so used, or obey the emperor, but be assured that in such a matter he is strictly forbidden by God to obey him, and let him know who does obey him that he is disobeying God and will eternally lose body and soul; for the emperor then conducts himself not only contrary to God and His law, but likewise contrary to his own imperial rights, oaths, duty, seal, and letters. And that you may not think that this is merely my fancy or that I give this counsel out of my own head, I set forth the ground and reasons for the same so strong and clear that you may understand that it is not merely my personal advice, but the earnest and manifold strong command of God, Whose wrath you should and finally must fear.

The first reason why you should not obey and fight for the emperor in such a matter is that you—as well as the emperor himself—vowed in baptism to defend, and not persecute or deny, the Gospel of Christ. . . . The second reason is that, were our teaching not true,—though everybody knows other-

[1] *D. Martin Luthers Warnung an seine lieben Deutschen (in den ersten Monaten des Jahrs* 1531). Walch ed., xvi., 1616 *et seq.*

wise—you should be deterred from participating in and becoming guilty before God of the atrocities that have taken place and will take place under the papacy. The third reason why you should not obey such a mandate of the emperor is that, if you did so, you would not only participate in and help strengthen such abominations, but that you would also help to destroy and root up all the good that is produced and done through the Holy Gospel. If you are open to advice, you have warning enough here that you should not obey the emperor and your princes in such case, as the Apostle declares: "We ought to obey God rather than men" (*Acts* v., 29).

The opinions of the jurists, to whom Luther deferred in the matter of forcible resistance against the emperor when he threatened princes and people with force on account of their faith, is shown in an interesting document setting forth a classification of cases in which it would be justifiable to resist judges and courts in their acts and decisions.[1] They declare that it is held by various legal authorities cited that opposition may be offered where a judge without jurisdiction proceeds

[1] *Etlicher Rechtsgelehrten zu Wittenberg Meinung von der Frage: Ob man einem Richter, der unrechtmässig procedirt, Widerstand thun möge* (without date). Walch ed., x., 558 *et seq.* Also see: *Drittes Bedenken der Theologen (Luther, Jonas, Bugenhagen, Amsdorf, and Melanchthon) zu Wittenberg von der Gegenwehr* (without date). Walch ed., x., 562 *et seq.*

with a case, where an appeal has been taken to a higher court, where a judge proceeds irregularly, where an injury is irreparable, or where a sentence is plainly and notoriously unjust and contrary to law. The emperor has no jurisdiction or authority in matters of faith: in such case, he has no authority, power, or right. Concerning this, he is only a private individual, and has no power to decide or to decree what people are to hold and believe. Resistance may be offered to a judge who acts without jurisdiction, proceeds contrary to law, or where an appeal has been taken from his decision. How much more, then, may resistance be offered to one who is not a judge at all in a given matter, and has no jurisdiction or dominion over the case?

In a paper signed by Luther and three of his co-workers,[1] at a time when the emperor was preparing to proceed against the Protestants to destroy them on account of their faith, an opinion is expressed as to whether it is the duty of the civil government to protect itself and its subjects against unlawful violence offered by princes or

[1] *Viertes Bedenken der Theologen zu Wittenberg von der Gegenwehr.* Signed by Luther, Jonas, Bucer, and Melanchthon (January, 1539). Walch ed., x., 566 *et seq.* Bluntschli: *Deutsches Staatswörterbuch*, article on Luther. Scherger: *The Evolution of Modern Liberty*, pp. 106, 107.

emperor alike, especially in religious matters. Without doubt, they declare, it is God's truth that not only should defence be permitted, but every government is truly and earnestly commanded and in duty bound to protect and defend itself if any person—civil authority or otherwise—undertake to compel it to accept idolatry and forbidden worship: likewise if any one attempt to exercise any unjust power over its subjects. This is repeatedly commanded in the word of God.

And as the Gospel confirms the office of civil authority, natural and established laws likewise confirm it. Every father, without doubt, is in duty bound, according to his ability, to protect wife and child against public murder; and there is no difference between an individual murderer and the emperor should he, beyond or outside the jurisdiction of his office, exercise unlawful authority and especially openly or notoriously unlawful authority. For open violence releases all duties between the subject and the ruler by natural law. Such is the case when the ruler endeavours to force his subjects into blasphemy and idolatry.

Luther declares further that when the ban has been made public against one or more members of a league or alliance, the enemy has declared war, and the parties on the defensive may take

notice thereof without waiting for actual attack, and take steps for their protection in accordance with the tenor of natural and written law, in view of the prescribed rule that the Gospel does not prohibit but confirms the office and natural right of civil authority. While this is true, it is not proper immediately to conclude to make an attack. The lords should consider whether it is expedient, or whether perhaps there is not another course that may be pursued.

As to whether the estates may protect and defend themselves if the emperor forcibly and tyrannically attack and make war upon them, Luther, as late as February, 1539,[1] expressed the fond hope that Charles V, of himself, was not the kind of a man to wage such a war; but the pope and the bishops—and it must be remembered that Rome claimed and indeed exercised over a given territory a civil authority, as well as ecclesiastical—would like to use him as their champion against the plain, clear, and evident truth. For the emperor, as king and lord, has no cause or complaint against the princes and lords, but the

[1] *Schrift an Johann Lübeck, Pfarrer in Cotbus, von der Gegenwehr* (Feb. 8, 1539). Walch ed., x., 554 *et seq.* It is not incumbent on the subject to obey unauthorised or unconstitutional commands from civil authority. See also *Bedenken an den Kanzler D. Gregor Brück von der Gegenwehr*, (1539). Walch ed., x., 548 *et seq.*

pope makes one where there is none that he may lead and involve the emperor in a dangerous contest. And as it is right to fight against the Turks and protect and defend ourselves, how much more justifiable and praiseworthy is it here to war against the pope and his followers, who are worse than the Turks.

If his imperial majesty join the papal or Turkish armies, Luther argues, he may expect a like reward. "Our princes have therefore decided that in such case his imperial majesty is not emperor but a warrior, servant, and robber of the pope, as the latter in such a war is the real leader and emperor. This is the attitude of our estates. The German princes have more right as against the emperor than the people in that day had against Saul, and Ahikam against Jehoiakim. The emperor is not an autocrat; and it is not within his authority to depose the electoral princes and change the form and glory of the empire; and it is not to be permitted, should he attempt it. Inasmuch as this could not and dare not be permitted in any way as affecting business matters and temporal affairs, how much less is it to be endured if his imperial majesty begin and wage a war for a foreign cause and in the interests of the devil. If his majesty does not know that the cause is so evil, it is nevertheless sufficient

for us that we know it and are certain of it."

It is well known how incessantly and earnestly Luther preached and wrote against rebellion and insurrection. He maintained that of the two ways by which wrongs may be righted—(1) the way of peace, that is, reform; and (2) the way of war, that is, revolution—the former method is the safer and the better. "He never had any sympathy with an armed uprising to effect the most legitimate reforms."[1] He was opposed to doing wrong in order to effect good. He considered the means to be employed as well as the end in view. Legal and constitutional measures properly taken are the Christian method of reform. The citizen may influence the government, the administration, the civil authorities, in any way he can peacefully, but he is not to use force and violence except in self-defence. This principle of submission to legitimate authority and refusal to endorse revolution is applicable only to the subject of an established government carried on in accordance with its constitutional rights and principles. It does not apply in any sense, with Luther, to the state's right to suppress riot and lawlessness, maintain peace within, and defend itself against foes without.

[1] Lindsay: *Luther and the German Reformation*, p. 182.

Attention has already been called to the *pactum* St. Augustine holds was agreed upon between kings and people in which is to be found the beginning of the idea that government rests upon the consent of the governed. From his day to the time of Gregory VII, this theory was in a measure preserved in the election of the German King by the people. Alongside of it was the theory that God gave the power of government to the people, and that they, in turn, gave it to the kings.[1] Not only did the Germanic law itself, but also the various contracts and agreements between princes and estates help to strengthen this theory. Appeal was made to the Bible, which tells of a contract made at Hebron between David and the people of Israel.[2] The jurists proclaimed the principle that, according to the *ius gentium*, every free people may set a superior over itself.[3] Nicholas of Cusa declared that, since all men are by nature free, then government rests on the consent of the governed.[4]

The state, according to the modern view, has no right to do wrong. To resist civil government

[1] Sullivan: *The Antecedents of the Declaration of Independence*, p. 75.

[2] *2 Samuel* v., 3.

[3] Gierke: *Political Theories of the Middle Age*, p. 39.

[4] *De Concordantia Catholica*, ii., 12, 14.

per se is to resist the ordinance of God. It is wrong to refuse obedience to that which is right; but, on the other hand, it is right to refuse obedience to that which is wrong. This is not resisting the ordinance of God. A people, a nation, a government, has the right of reforming its constitution, its laws, its form, its purpose and functions, the better to secure and enjoy the benefits of government. Every one of these modern principles was recognised and asserted by Luther nearly four centuries ago. He gives rightful authority the recognition it commands in the civilised world to-day. "Once existing, the state is inviolable. The government which represents the state, may be amended. The government which misrepresents and betrays the state, may be overthrown. But they who assail the state itself, assail the condition of all civilised rational life—their own included—and, so far forth, are suicides, as well as traitors to God and man."[1]

[1] Chamberlain: *The State, its Nature, Origin, and Functions*, p. 34.

CHAPTER VII

THE OBJECTS OF THE STATE

IF the state has always existed and is necessary to man, it has a purpose, and this purpose it is the function of government to accomplish. In other words, government is the means by which the ends of the state may be secured. To say that the mere continuance of its own existence is the end of the state, does not satisfactorily answer the question. Its aim, its object, cannot be and is not simply to maintain its own life, but to be and to do something for its subjects and for the world. That which is of no service to man or people is not necessary and will not abide. Yet it is generally agreed that, viewed from different standpoints, the state is both a means and an end. Its highest end is the highest end, the highest possible development, of the individual[1]; and thus it is a means for the advantage of the individ-

[1] M'Kechnie: *The State and the Individual*, p. 78. "The best life" is the same both for the state and the individual. See Aristotle: *Politics*, vii., 14, 15.

uals who compose it. But from another standpoint, viewed as having an existence apart from the individual, it has an end in itself, and its citizens are subordinate to it and bound to serve it for its own sake.[1] The ancient view of the state may be said, in a degree, to have overlooked the individual in placing emphasis on the omnipotence and prerogatives of the state; while the modern view rather overlooks the majesty and the power of the state in putting great stress upon personal liberty, sometimes bordering on license.

The phrase we are considering may be used in different senses. There is the conscious end of the state, referring to that which is considered and planned and for which men work; the actual end, having reference to that which is really accomplished, and this may be either more or less than the conscious end; the practicable end, looking to that which is feasible and attainable, under given conditions[2]; and the highest conceivable or ideal end, which is unattainable, at least in our day, but which is a distant star on which men fondly gaze.[3] All these various ways of considering the

[1] Bluntschli: *The Theory of the State*, p. 289. Willoughby: *An Examination of the Nature of the State*, p. 317.

[2] Willoughby: *An Examination of the Nature of the State*, p. 309.

[3] Bluntschli declares: "The end of the state must be recognisable by men, it must be determined by human nature,

aims of the state have shifted and changed from generation to generation and among different peoples and conditions; but it will be generally conceded that the true end of the state is of the nature of an ultimate. It has been progressive, and may be expected to continue so. "To know the ideal end of the state would be to know the end of life itself." [1]

The subject is one of such deep interest and great importance that it merits serious consideration. It has formed the basis of much speculation and many theories. This diversity of views has given rise to a classification of theories of the possible and desirable aims of the state into (1) the anarchistic, maintaining that all government is not only essentially an evil, but an unnecessary evil; (2) the individualistic or *laissez faire*, which limits the province of the state to protection of property, life, and liberty; (3) the common welfare; and (4) the socialistic and communistic,[2] which tend to the other extreme of having the individual look to the state for direction and assistance in all

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and it must be at any rate nearly attainable by human effort." *Theory of the State*, p. 293. But this would not necessarily apply to the ideal end.

[1] Taylor: *The Individual and the State*, p. 52.

[2] Willoughby: *An Examination of the Nature of the State*, p. 318.

the affairs of life.[1] Between these classes is to be found every grade and shade of difference.

Furthermore, in all theory and in all life, there has been a constant conflict between the claims of those who urge large governmental supervision and of those who urge as little governmental interference as possible, leaving the individual free to enjoy the greatest degree of liberty. It has appeared to many as if the state and the individual were opposing factors, and that the higher the state is raised, the lower the individual is depressed; that the more power is conferred on the state, the less liberty and opportunity is given to the individual. On closer inspection, however, it will be found that it is possible—at least within certain limits—to elevate the state, increase its power, enlarge its jurisdiction, and increase its functions, and at the same time raise the standard of the individual, multiplying his opportunities for development, and give him greater possibilities and a larger life. The only way to raise the nation is to raise the average individual. It is a mistake to think that whatever adds to the state subtracts from the individual. "Error must result from such a position, not merely because of its unscientific arithmetical conception of the relation of the individual to the state, but also

[1] Wilson: *The State*, p. 629.

because it leaves entirely out of account a third most important factor, an intermediate organisation, society. The state and society are not identical and must not be confounded. . . . The distinction between the state and society lies, not in the presence or absence of coercion, but in the presence or absence of law, which is something more than mere force."[1] It will be found that in the last analysis the best interests of the individual and of the state coincide, and that co-operation is the line of development.

A distinction must be drawn between political and individual freedom. Political freedom applies to the degree in which the people participate generally in the affairs of the state, or at least direct the manner in which its powers shall be exercised. Individual freedom refers to the degree in which the "private rights of life, liberty, and property are secured."[2] Either one may exist in a high degree and the other in a low degree. A high degree of political freedom may be found, as it was among the early Teutons, with relatively small protection to private rights. Individual rights may be well protected, as under the Roman Empire, with little political freedom. It is like-

[1] Taylor: *The Individual and the State*, pp. 38, 40.

[2] Willoughby: *An Examination of the Nature of the State*, pp. 312, 313.

wise true that in a democracy there may be little respect for individual rights, while in a monarchy there may be found a high regard for them.

The mere enumeration of various theories held as to the aim of the state would be no small task. It will be sufficient to notice some of the more important. Aristotle declares: "Every state is a community of some kind, and every community is established with a view to some good; for mankind always act in order to obtain that which they think good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims, and in a greater degree than any other, at the highest good. . . . The state comes into existence, originating in the bare needs of life, and continuing in existence for the sake of a good life. . . . Justice is the bond of men in states, and the administration of justice, which is the determination of what is just, is the principle of order in political society."[1] "Complete life in the associated state" is Aristotle's view of the aim of the state. It must be remembered, however, that the citizens for whose welfare Aristotle conceived the state to exist were only a limited and privileged class of wealth, culture, and leisure. Slaves—even skilled labourers—were

[1] Aristotle: *Politics*, i., 1, 2.

not included in the government. Their interests, their comfort, and their welfare were not to be overlooked by the statesman, but they were deemed incapable of true happiness.[1]

According to the ancient view in general, and particularly that of the Greeks, the theory was that the individual serves the state, not the state the individual. The state was viewed as the highest aim, the perfection of humanity. It was, therefore, an end in itself. "The welfare of private men was therefore unhesitatingly sacrificed to that of the state, and in fact the former was only so far justified and valuable as it was serviceable to the welfare of the state."[2]

Dante adopted Aristotle's doctrine that the merit of government may be tested by its promotion of the general welfare of all its subjects. He declared: "Since the monarch is full of love for men, . . . he will have all men good, which cannot be if they live under perverted constitutions . . . and the aim of such rightful commonwealths is liberty, to wit that men may live for their own sake. . . . Though a consul or king in regard of means be the lords of others, yet in regard to the end they are the servants of others:

[1] Pollock: *An Introduction to the History of the Science of Politics*, p. 28.

[2] Bluntschli: *The Theory of the State*, p. 287.

and most of all the monarch, who without doubt is to be deemed the servant of all."[1] In Dante, the institution of a *universalis pax* is the aim and object of the empire.[2] This thought was expressed by the Councils of Paris and Worms, 829 A.D., which declared it to be the aim of government "to rule the folk with righteousness and equity, to preserve peace and unity."[3]

Marsilius of Padua held that government is established to maintain peace, and that the state exists to render the higher life possible.[4] He has in mind a solicitude on the part of the state for the *bene vivere* of its citizens, on earth and in heaven as well, and therefore includes morals and general welfare in its aims. In short, he makes the church a state institution. The line of demarcation between church and state is always a line between two classes of affairs, and not a line between two classes of people.[5] The state regulates and administers the affairs of the church, admitting to the priesthood, regulating its functions, appointing, paying, and removing clergymen.

[1] Pollock: *An Introduction to the History of the Science of Politics*, pp. 37, 38.

[2] Gierke: *Political Theories of the Middle Age*, p. 188.

[3] *Ibid.*, p. 142.

[4] *Defensor Pacis*, i., 1. Bullowa, *History of the Theory of Sovereignty*, p. 21.

[5] *Defensor Pacis*, i., 4–6; ii., 2, 7, 14, 17, 18, 21.

The state itself should issue, at all events it should authorise, interdicts, excommunications, fasts, feasts, and other ecclesiastical acts. Education belongs exclusively to the state. The church can have no temporal power or authority except as given by the state. Councils should be summoned by the civil government. Church property is at the disposal of the government, and it may be freely taxed therefor, and, if necessary, may be secularised and sold by the state.[1]

Thomas Aquinas regarded the virtuous life as the object of the state. The *virtus humana* of the people is the means employed by human government to realise, or at least cultivate and promote the *virtus divina*, which the church aims to secure.[2]

Generally speaking, the mediæval view of the state was that of an indirect theocracy, according to which the ruler was looked upon as God's vicegerent. Unity of belief and of creed were fundamental doctrines of that age.[3] Islam, too, viewed the kingdom of God on earth as entrusted by Him to the Sultan. The theocratic theory of the duty of the state bases it upon service to

[1] Gierke: *Political Theories of the Middle Age*, pp. 189, 191, 192.

[2] *De Reg. Princ.*, i., 14. Gierke: *Political Theories of the Middle Age*, p. 189.

[3] Bluntschli: *The Theory of the State*, p. 58.

God, and the establishment of His kingdom upon earth. Its aim is to establish and maintain God's rule and commands in society, including justice, discipline and morality. The Reformation energetically revived the theocratic view of the aim of civil government. The Protestant reformers generally maintained a Christian aim and a divine nature for civil authority. Melanchthon declared, however, that rulers must not act contrary to the will of the people for they have received their power from them.[1] He viewed the ultimate aim of the state to be the establishment among men of the true knowledge of God, and described the government as the guardian of the two tables of the law. The magistrate, therefore, according to his view, should forbid heresy and punish heretics.[2]

John Stuart Mill fixed the limit of the state's activity by self-protection.[3] In his view, the great aim of government is progress, which necessarily includes the maintenance of order. There must be an understanding and recognition of the purposes to be promoted and the objects to be

[1] Scherger: *Evolution of Modern Liberty*, p. 105.

[2] Geffcken: *Church and State*, i. 328. Dunning: *Political Theories from Luther to Montesquieu*, p. 14 *et seq.*

[3] Pollock: *An Introduction to the History of the Science of Politics*, p. 124.

accomplished.[1] Liberty for each individual is the absolute end. Herbert Spencer repeated the thought of Kant that "it is the duty and eventual tendency of society to allow the widest liberty to each of its component individual members compatible with the equal liberty of all."

Locke's view of the end of government is the "good of mankind";[2] and Professor Huxley declared this "the noblest and at the same time briefest statement of the purpose of government" known to him.[3] It is true that Locke considered the great and chief end of men uniting into commonwealths, and putting themselves under government to be the preservation of their property.[4] To Wilhelm von Humboldt, "the maintenance of security, as well with regard to the attacks of foreign enemies as to the danger of internal discord, constitutes the true end of the state, and must especially occupy its activity."[5] William of Ockham held that government should promote the liberty and exclude the slavery of its subjects.[6]

[1] M'Kechnie: *The State and the Individual*, p. 79.

[2] *On Civil Government*, ii., par. 229.

[3] *Method and Results*, p. 278. M'Kechnie: *The State and the Individual*, p. 75.

[4] *On Civil Government*, ii., par. 124.

[5] *Sphere and Duties of Government*, p. 53.

[6] *Octo Quaestiones*, iii., 5. Gierke: *Political Theories of the Middle Age*, p. 142.

In marked contrast with this more limited activity, Burke, the English philosopher and statesman, looked upon the state as "a partnership in all science, a partnership in all art, a partnership in every virtue, and in all perfection."[1] Hegel maintained that morality (*Sittlichkeit*) and the application and realisation of the moral law is the end of the state.[2]

To a political writer of our own day, the modern state's chief function is to punish and prevent wrong.[3] To another, the object of the state should include the perfect development of all its citizens in the highest, noblest, and fullest form of social, political and individual life; *i.e.*, the highest present welfare and future perfection of the individual and of humanity.[4] The end of government, according to another, is the facilitation and accomplishment of the objects of organised society.[5] To Bluntschli, it is "the development of the national capacities, the perfecting of the national life, and, finally, its completion; provided, of course, that the process of moral and political development shall not be opposed to the

[1] Pollock: *An Introduction to the History of the Science of Politics*, pp. 125, 126.

[2] Bluntschli: *The Theory of the State*, p. 299.

[3] Taylor: *The Individual and the State*, p. 50.

[4] M'Kechnie: *The State and the Individual*, p. 74.

[5] Wilson: *The State*, p. 639.

destiny of humanity."[1] This spirit of international helpfulness is recognised by another writer who declares: "That the state should act as an individual, should maintain good faith, clemency, and moderation, should endeavour to further the world's progress—these are some of the most advanced political ideas of the age in which we live."[2]

Turning now to Luther's views on the subject, we find that he maintained that civil rule is to be conducted with a view solely to the best interests of the people and of the country as a whole. Government, in short, is to be in the interests of the governed. Whatever the form of government may be, it is a sacred trust to be executed as a government for the people.

In his *Appeal to the German Nobility*, Luther insists on the principle that civil authority has jurisdiction over all matters involving money, property, and person or honour.[3] After indicating a number of reforms that should be instituted by the civil authorities, he says, in the same document: "In all, however, that I have said

[1] Bluntschli: *The Theory of the State*, p. 300.

[2] Jenks: *Law and Politics in the Middle Ages*, p. 69.

[3] Luther says: "*Was Geld, Gut und Leib oder Ehre anbetrifft, den weltlichen Richtern lassen.*" Also see Dunning: *History of Political Theories from Luther to Montesquieu*, p. 9.

above, my object has been to show how much good temporal authority may do, and what is the duty of all authorities, so that every person may learn what a serious thing it is to rule and have the chief place. It is the duty of those in authority to seek the good of their subjects."[1]

In a later tract,[2] Luther asserts that the Christian prince must get rid of the idea that he is to rule by force. Cursed is the life that is lived and sought for one's own use and benefit. Cursed are all works that are not done in love. Government is established and administered in love when it is carried on not for one's own pleasure, use, honour and convenience, but for the benefit, honour and safety of others. The prince must hold justice in his hand as firmly as the sword and mete it out, sternly on the one hand and tempered with justice on the other hand, as good reason may dictate, so that justice may rule in all things, and that reason may remain the highest law and master of all laws. Above all, the ruler is to consider his subjects and have his heart right towards them. He does this when he seeks, with

[1] *An den christlichen Adel deutscher Nation von des christlichen Standes Besserung* (1520). Weimar ed., 6 Band, 381 *et seq.*

[2] *Von weltlicher Oberkeit, wie weit man ihr Gehorsam schuldig sei* (1523). Weimar ed., 11 Band, 229 *et seq.*

all wisdom, to make himself useful and serviceable to them.[1] Let him not think: "Land and people are mine, I will do with them as I please"; but, "I am of the land and of the people, and I must act in such a way as to be of benefit and service to them." He is not to seek how he can be overbearing and imperious, but how his people may be protected and defended in peace. Imitating the spirit and the example of Christ, the ruler is not to seek his own interests in his subjects, but their interests, and he is to serve, protect and defend them, ruling solely that they, and not he himself, may have wealth and profit therefrom. Let the prince thus in his heart renounce his power and authority and consider the needs of his subjects and treat these needs as if they were his own. In short, the duty of the prince is fourfold: (1) towards God, with confident trust and devout prayer; (2) towards his subjects, with love and Christian service; (3) towards his counsellors and his mighty men, with clear mind and unprejudiced judgment; and (4) towards evil-doers, with discriminating earnestness and firmness.

In writing about the uprisings of the peasants, Luther urged the princes to deal more kindly and

[1] Frederick the Great echoed this same thought when he declared of himself: "*Ich bin der erste Diener des Staates.*"

considerately with their subjects. In his *Exhortation to Peace* he says[1]:

In the first place, we have no one to thank for such disorders but you princes and lords, especially you blind bishops and insane priests and monks, who even now obdurately cease not to grind and flay the poor common man to keep up your pomp and pride, till he neither can nor will endure it longer. The sword is on your neck, while you think to sit so fast in the saddle that none can unhorse you. This security and presumption will break your necks, as you will see. . . . Yet, unless God be moved by our repentance to avert it, this conspiracy of the peasants must lead to the ruin, wasting and desolation of our German land by horrible murder and bloodshed. For know, dear lords, it is God's doing that men neither can, nor will, nor should, endure your oppression any longer. You must change your ways, and yield to God's word. If you do not do it kindly and voluntarily, you must do it under compulsion and ruin. If these peasants do not accomplish it, others will. . . . If you will take advice, my dear lords, for God's sake give place a little to anger. A wagonload of hay should turn aside for the drunken man. How much more should you cease from your rage and tyranny, and treat the peasants reasonably, as drunken or erring. Do not enter upon a strife

[1] *Ermahnung zum Frieden auf die zwölf Artikel der Bauerschaft in Schwaben* (1525). Weimar ed., 18 Band, 279 *et seq.*

with them, for you know not what the end may be. Try kind means, lest a spark be kindled that may light such a flame over all Germany as none can quench. . . . A civil ruler is not set in authority that he may seek his own interests and pleasures from his subjects, but that he may secure their best interests.

In his later years, Luther wrote Count Albrecht of Mansfeld,[1] warning and urging him to cease his tyrannical and oppressive treatment of his subjects. In that letter he exhorts the count not to think that his lordship and all possessions are his own. God will not suffer it. The peasants, burghers, and nobles have their own possessions, although under certain feudal obligations, in accordance with imperial law, but nevertheless confirmed or sanctioned by God, and thus likewise from divine right. He who wrongfully takes the property of others is in God's sight a thief and a robber. Luther warns the count of the result of such an example, were it to prevail. If the overlord were to appropriate the possessions of his underlord, the nobleman those of the peasant, the prince those of the nobleman and the count,

[1] Brief von 1542. See Bluntschli: *Geschichte der neueren Statswissenschaft, Allgemeines Statsrecht und Politik*, p. 65.

it would lead to a government worse than that of the Turk, yes, to a devilish régime.

Luther insists again and again on the fulfilment of duty in the varied relations of life.[1] The prince is not to rule in the interests of a certain class or classes, but on behalf of the masses and of the people as a whole. Luther does not aim to present a theory of the state, but a system of Christian doctrine. He does not aim to announce a law, but to exhort to pious fulfilment or performance of duty. He is in all things a theologian, not a jurist, a preacher and soul-saver, not a statesman.[2] He holds that it is the duty of every community, council, or government to prevent and abolish anything that is contrary to God's will and harmful to men in body and soul. His conception of the state and of the duty of the individual to his neighbour leads directly to that of Hegel.[3] Luther viewed questions concerning marriage, political relations, peace and

[1] Speaking of the momentous changes of the sixteenth century, Mr. Bryce says: "A new explanation of the nature of political society was needed; and from that time onward new theories of state power began at intervals to appear." Bryce: *Studies in History and Jurisprudence*, p. 532.

[2] Bluntschli: *Geschichte der neueren Statswissenschaft, Allgemeines Statsrecht und Politik*, p. 62.

[3] Figgis: *Studies of Political Thought from Gerson to Grotius*, p. 71.

war, alliances, obedience to legitimate authority, rebellion, and such matters in the light of Biblical, particularly Christian, principles.[1]

Luther's own attitude is too often confused with the developments and conditions of the following decades and centuries. He himself lived under an imperial confederation in which were included, *inter alia*, free cities with a considerable degree of local government. He thoroughly believed that the people of a country should govern themselves,[2] though he had no occasion to express a preference for any particular form of government. All government, according

[1] Raumer: *Ueber die geschichtliche Entwickelung der Begriffe von Recht, Staat und Politik*, p. 31.

[2] In the early days of Germany, it appears that the ruler was elected by popular suffrage. Conrad I, according to some historians, was elected by all the Franks, though others declare it was by the princes and chief men, and yet others maintain that it was by all the nations. Conrad II was elected in the year 1024 by the chief men, and his election was confirmed by the people. The same practice was followed in other later elections. In the early imperial diets, every freeman was entitled to be present. Prescott: *Robertson's History of the Reign of the Emperor Charles V*, i., 409, 411. All through the later Middle Ages, beginning with the close of the thirteenth century, it was a doctrine quite generally accepted that civil government rests on the consent of the people, who have an original right to choose their own form of government. See Sidgwick: *The Development of European Polity*, p. 332; and Merriam: *History of the Theory of Sovereignty since Rousseau*, p. 12.

to his view, is to be on behalf of the governed. In the light of the experiences of the peasants' revolts, he saw reason to doubt the wisdom of giving the unfitted, untrained, and illiterate peasant of his day a voice in the direct administration of the government. At the same time, no one urged more strongly than did he the education of the young, so that they might be trained to serve the state intelligently. Similar limitations have been placed upon the right of franchise in the most enlightened nations. Various states of the United States in our own day have disfranchised certain classes of the population on the alleged ground that they are not fitted to participate in the government. "In order that popular government should work prosperously," wisely declares a recent writer, "two things are above all requisite: first, the people must be free to express their will at the polls; and, second, the people must be sufficiently enlightened to express a will that is wise and honest, and not one that is foolish or corrupt."[1]

Kant and his followers exclude from the jurisdiction of the state all matters but juridical. They maintain that the sphere of the state is one of law, and that morals are to be regulated by each individual.[2] Kant declared that the object of

[1] Kelly: *Evolution and Effort*, pp. 124, 125,

[2] M'Kechnie: *The State and the Individual*, p. 95.

the state—its end and safety—does not consist in the welfare or happiness of the citizens, but in the agreement of the constitution with the principles of law.

This legal theory notwithstanding, an enlightened state cannot help but consider matters involving moral questions. In its rule and government over its own subjects and in its relations with other nations alike, such questions are constantly arising. Relations between man and man, between nation and nation, and between man and nation all involve moral considerations. So far as these questions affect the external life of men in society, they properly come within the realm of the state. Not that the state lays down or should lay down fast rules as to any given system of morals; but, for its own protection, as well as its own peace, it must punish and suppress public immorality and give every encouragement to the inculcation of good morals.[1] It cannot leave the subject alone, however much it may wish to do so. "The state is not a merely economic partnership, even as it is not a merely jural agreement. The state is an organic unity. It moves with a moral energy. It sets itself for

[1] The right of the state to promote morality is discussed in Green: *Lectures on the Principles of Political Obligation*, pp. 206–210.

the highest weal of each and all."[1] Recognised standards of morals are to be found, either openly expressed, or ill-concealed between the lines, in the laws of every civilised country. "The 'legal state' may figure prominently in the schools, but it is the 'moral state' which takes its place among the great powers of the world."[2]

Martin Luther, viewing the state as fulfilling a human necessity in the divine dispensation of the world, maintained that it is our highest privilege to serve God by serving one another.[3] He applies this principle to the political as well as to the social and religious world.

[1] Chamberlain: *The State,—its Nature, Origin and Functions*, p. 15.

[2] M'Kechnie: *The State and the Individual*, p. 97.

[3] "No one can read Luther's utterances without perceiving at once that he enunciated the principle of social reconstruction; namely, that we are not competitors but brothers, and that it is our highest privilege to serve God by serving one another." Nuelsen: *Luther the Leader*, p. 238.

CHAPTER VIII

THE FUNCTIONS OF THE STATE

THE powers which belong to and proceed from the real body-politic—the sovereignty of the state—constitute government in its different functions, operating in and through its various departments. These powers may be "divided, distributed, granted, reserved, or revoked,"[1] at the will of the sovereign power.

The separation of the principal powers of the state[2] has been recognised since the time of Aristotle.[3] He terms them deliberative, magisterial, and judicial. Governments have changed with the centuries, and so has this classification of powers; yet in a general way Aristotle's division corresponds with the modern one of legislative,

[1] Tapp: *The Story of Anglo-Saxon Institutions*, p. 5.

[2] These principal or essential functions and powers of government are called constituent functions by Woodrow Wilson. *The State*, p. 613.

[3] Aristotle: *Politics*, iv., 14–16.

executive,[1] and judicial powers. These powers are variously distributed under different governments[2] but are generally recognised as separate and distinct.[3]

Bodin is recognised as the first to maintain that the prince ought not to administer justice personally, but should leave judicial matters in the hands of independent judges. He argues that if legislative and executive powers were united in the same person, or even in the same body of magistrates, there would be no liberty, because people would be afraid that the monarch or the senate might make tyrannical laws in order to administer them tyrannically. There would be no liberty, again, he declares further, if the judicial power be not separated from the legislative and executive. If it be joined to the legislative power

[1] Bluntschli considers the term "executive" unfortunate, and prefers "government" or "administration." *Theory of the State*, pp. 490, 491.

[2] Under our own government, for example, the chief executive participates in legislation. A part of the legislative power—the United States Senate—participates in the work of the executive, such as confirming nominations to certain appointments.

[3] "The legislative, administrative, and judicial functions are not regarded as militating against the essential and ultimate unity of the principle from which they emanate." Merriam: *History of the Theory of Sovereignty since Rousseau*, p. 223.

the life and death of the citizens may be arbitrarily disposed of, for the judge will be legislator. If it be joined to the executive power, the judge may have the force of an oppressor.[1]

Montesquieu was the first effectively to call for a subjective as well as objective separation of these great functions of the state, that is, that the different functions should be exercised by different persons.[2] Not that there is or could be an absolute separation, in the sense that the several powers are co-ordinate, independent, and equal; for there must be an interdependence, as between the various members of the human body, and through it all there must be a regulating and controlling power, a power that determines the laws themselves and the relations that shall exist between the parts. This power is the legislative.

Too much stress cannot be placed upon the importance, indeed the necessity, of each of these general powers of government keeping well within its sphere. George Washington, in speaking of this matter, said:

> It is important, likewise, that the habits of thinking in a free country should inspire caution, in those intrusted with its administration, to confine themselves within their respective constitutional spheres,

[1] *Esprit des Lois*, xi., 6.

[2] Bluntschli: *The Theory of the State*, p. 487.

avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it, which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments, ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them.[1]

A full recognition of this check and countercheck, as viewed in the days of the establishment of the United States government, is shown in a letter written by John Adams to John Taylor. In it, he says:

First, the states are balanced against the general government. Second, the house of representatives is balanced against the senate, and the senate against the house. Third, the executive authority is in some degree balanced against the legislature. Fourth,

[1] Washington's *Farewell Address*, 1796. In Bryan: *The World's Famous Orations*, viii., 99, 100.

the judiciary is balanced against the legislature, the executive, and the state governments. Fifth, the senate is balanced against the president in all appointments to office, and in all treaties. Sixth, the people hold in their hands the balance against their own representatives by periodical elections. Seventh, the legislatures of the several states are balanced against the senate by sexennial elections. Eighth, the electors are balanced against the people in choice of president and vice-president.[1]

In the days of feudalism, the baron, the prince, the king, owned the state. It belonged to him. He was himself the state. The functions of government were simply the functions of proprietorship. The state had become, under the feudal system, merely a private estate. The conscience of the prince was the only standard of justice; the power of the prince the only conclusive test of prerogative.[2]

But in the age with which we are concerned, the beginning of the sixteenth century, feudalism was rapidly giving way. Notwithstanding the limitations on the powers of the state, it had various functions united in its internal administration. The prince possessed executive and judicial

[1] Willoughby: *An Examination of the Nature of the State*, p. 399.

[2] Wilson: *The State*, pp. 618, 619.

power, and participated in legislation. The state assemblies exercised judicial as well as legislative functions. Without entering into a consideration or discussion of their form, their nature, or their subjective separation, Martin Luther recognised the different spheres of these three great functions.[1] He appealed for the enactment of certain legislation; he urged the execution of the laws; he declared that matters of legal right and of constitutional law should be left to the jurists and the courts. These several departments of the government are under obligation to fulfil the general aims and objects of the state—*i.e.*, preserve the peace, protect the good, punish the wicked, develop the state and its people, and maintain itself against foreign attack or aggression. These may be called the essential functions of the state.

Luther maintained that all matters concerning money, property, life, and honour should be left

[1] Luther conceded to the state—though from religious motives—what the modern state claims as its exclusive right: legislation, administration, justice,—in which it recognises no concurrent jurisdiction of the church. . . . His presentation of the state was only a little more than the narrow realm of administration of justice. . . . His state is not very much more than an indispensable institution for discipline (training, education) and peace. Bluntschli: *Geschichte der neueren Statswissenschaft, Allgemeines Statsrecht und Politik*, pp. 60, 61.

to the temporal authorities,[1] and that every court is under obligations to judge in accordance with the laws of the land.[2] In writing about the uprisings of the peasants and their various demands, he declared that he referred to the jurists (*Rechtverständigen*) the questions concerning the rights and privileges of the citizen in the matter of wild game, birds, fish, and wood, and as to forests, service, rent, taxes, etc. It did not become him, he said, as a preacher, to decide and judge in these matters. He considered it his duty to instruct and teach the conscience the things that concern divine and Christian subjects. Furthermore, there are books enough on imperial laws.[3]

The state possesses other functions of a particular nature, that may be termed secondary—notwithstanding the fact that some of them are of great importance—because they are not essential elements of every state or every government. They are variously termed non-essential, ministrant, or general welfare functions, and cover industrial, economic, educational, and moral interests. They are lines of endeavour pursued

[1] *An den christlichen Adel deutscher Nation von des christlichen Standes Besserung* (1520). Weimar ed., 6 Band, 381 *et seq.*

[2] *Bedenken Luthers* (without date). Walch ed., x., 356.

[3] *Ermahnung zum Frieden auf die zwölf Artikel der Bauerschaft in Schwaben* (1525). Weimar ed., 18 Band, 279 *et seq.*

by various peoples and governments, but not in any case by all. Conditions and needs change with different countries and different ages. One period and one people need one appeal. Another period and another people need quite a different one.[1] Luther's age called forth from him a ringing appeal for action by the civil authorities in connection with particular functions of the state, and those purposes are worthy of note.

EDUCATION

Germany had her monastic schools, in which the training and education, given under the exclusive direction of the church, was largely of an ecclesiastical nature. The language of the church, Latin, was used to the almost total neglect of the language of the land. The church also established, during the Middle Ages, cathedral and parochial schools, but these were conducted largely with a view to preparing men for the priesthood, in the former, and for church membership, in the latter schools. The parochial school was the successor, in a way, of the catechetical

[1] "The determination of just what powers shall be assumed by the state, is solely one of expediency, and as such lies within the field of politics, or the art of government, and not within the domain of political theory." Willoughby: *An Examination of the Nature of the State*, p. 338.

school of the early church. In it, reading and writing did not usually form a part of the course of study.[1]

In the latter part of the Middle Ages, the commercial developments and needs, the influence of the Renaissance, and the rise of a feeling of greater independence from the church, led to the establishment of secular schools, especially among the knights and in the cities. Many of these, too, were under the control of the clergy. Except among the higher classes, female education was sadly neglected. Professor Painter, in reviewing Germany's educational facilities up to the beginning of the sixteenth century, tersely expresses the common people's need of educational opportunity in these words: "A notable and lamentable fact in the educational arrangements of the Middle Ages was the neglect of the common people. No general effort was made to reach and elevate them by education. The ecclesiastical schools were designed chiefly for candidates for the priesthood; the parochial schools fitted the young for church membership; the burgher schools were intended for the commercial and artisan classes of the cities; knightly education gave a training for chivalry. Thus the labouring classes were left to toil on in ignorance and want; they

[1] Painter: *Luther on Education*, p. 75 *et seq.*

remained in a dependent and servile condition, their lives unillumined by intellectual pleasures. If here and there, as claimed by Roman Catholic writers, popular schools were established, they were too few in number and too weak in influence to deserve more than passing mention. Popular education was the outgrowth of the Reformation."[1]

There were renowned universities largely attended. The first German university was founded by the Emperor Charles IV at Prague in 1348, in order that his "faithful subjects who continually hungered for the fruits of science might find satisfaction at home and no longer be compelled to girdle the earth in the search for knowledge, to hunt out strange peoples and to beg in foreign lands."[2] No less than fifteen others had been established prior to the time with which we are now concerned.

Two great names associated with the humanistic movement shine out in the first half of the sixteenth century. Reuchlin gave an impetus to the study of Greek and Hebrew; and Erasmus, besides developing a sense of culture, prepared the way for philological and historical investigation. "The new culture conquered along the whole line, and

[1] Painter: *Luther on Education*, pp. 86, 87.
[2] Russell: *German Higher Schools*, p. 14.

by 1520 had forced its way into all the larger universities."[1] "The mediæval church considered the whole wide field of secular activities as essentially evil. Nature, with all her riches and wonders, was opposed to God. The arts, if not subservient to the church, were inspired by the devil; human intellect, when not in slavish submission to the dogma, was dangerous."[2]

As a liberator of the human mind, Luther was a staunch advocate of popular education. He urged that every child should be given an elementary education, and that apt scholars should be given advanced instruction. He based his argument on training men and women not alone for the service of the church, but for the service of the state as well, that the government might have trained, capable, and efficient servants at command. He took a hand personally in the establishment of town and village schools. The curriculum of the existing schools should be altered and corrected, and there should be compulsory education for all the youth. Every village, every town, every country district, should have its public school, and it should be established and directed by the civil authorities. He urged

[1] Paulsen: *The German Universities; their Character and Historical Development*, p. 40.

[2] Nuelsen: *Luther the Leader*, p. 210.

a practical education that would fit the pupils for life's duties, rather than a mere study of the schoolmen and the dead theories and philosophies of the past. Public libraries, manual training, instruction in music, illustrated teaching for the primary grades, and the cementing of the various schools from the beginners' to the university into one great system are included in Luther's plans for the training of the younger generations.

In his *Appeal to the German Nobility*,[1] he urges the reformation of the German universities, in which he alleges a free life was led, but little of the Holy Scriptures and Christian faith was taught and the blind heathen master Aristotle reigned more than Christ. He recommends fewer books, but that these should be the best. It is not many books that makes learned, but it is a good thing read often, however short it may be, that makes learned in the Scriptures and pious withal. He urges Biblical instruction in all the schools and careful oversight of the books used. He earnestly wishes that each town might have also a girls' school.

[1] *An den christlichen Adel deutscher Nation von des christlichen Standes Besserung* (1520). Weimar ed., 6 Band, 381 *et seq.* The importance of education is one of the leading topics in this stirring appeal. Fisher: *The Reformation*, p. 86.

In a tract written a few years later,[1] he calls attention to the deterioration of the German schools, and says the universities are becoming weak and the monasteries are declining. He states various reasons why public schools should be established everywhere. The civil authorities of the towns must attend to this matter, because parents neglect this duty from various causes. Some would not do it if they could. The great majority of parents are unqualified for it. Furthermore, parents have no time for it. Very few parents could afford the expense of private instruction.

Therefore, he says, it will be the duty of the mayors and council to exercise the greatest care over the young. For since the happiness, honour, and life of the city are committed to their hands, they would be held recreant before God and the world, if they did not, day and night, with all their power, seek its welfare and improvement. Now the welfare of a city does not consist alone in great treasures, firm walls, beautiful houses, and munitions of war; indeed, where all these are found, and reckless fools come into power, the city sustains the greater injury. But the

[1] *An die Ratherren aller Städte deutsches Lands, dass sie christliche Schulen aufrichten und halten sollen* (1524). Weimar ed., 15 Band, 9 *et seq.*

highest welfare, safety and power of a city consist in able, learned, wise, upright, cultivated citizens who can secure, preserve, and utilise every treasure and advantage. He urges a general knowledge of God's word, and declares that we will not preserve the Gospel without the languages; for the languages are the scabbard in which the word of God is sheathed. They are the casket in which this jewel is enshrined; the cask in which this wine is kept; the chamber in which this food is stored; and, to borrow a figure from the Gospel itself, they are the baskets in which this bread, and fish, and fragments are preserved. He then goes on to state:

So much for the utility and necessity of the languages, and of Christian schools for our spiritual interests and the salvation of the soul. Let us now consider the body and inquire: Though there were no soul, nor heaven, nor hell, but only the civil government, would not this require good schools and learned men more than do our spiritual interests. . . . It is not necessary to say here that civil government is a divine institution. The question is, how are we to get able and skilful rulers. . . .

Even if there were no soul and men did not need schools and the languages for the sake of Christianity and the Scriptures, still, for the establishment of the best schools everywhere, both for boys and girls,

this consideration is of itself sufficient, namely, that society for the maintenance of civil order and the proper regulation of the household, needs accomplished and well-trained men and women. Now, such men are to come from boys, and such women from girls. Hence it is necessary that boys and girls be properly taught and brought up. . . .

As for myself, if I had children[1] and were able, I would have them learn not only the languages and history, but also singing, instrumental music, and the whole course of mathematics. There is an urgent necessity [he maintained], not only for the sake of the young, but also for the maintenance of Christianity and of civil government, that this matter be immediately and earnestly taken in hand.

Several years later, in a letter to the Elector John,[2] Luther wrote:

Where there are towns and villages which have the ability, your Electoral Grace has the power to compel them to maintain schools, pulpits, and parishes. If they will not do it from a consideration for their salvation, then your Electoral Grace, as highest guardian of the youth and of all others needing supervision, is to compel them to do so, just as they are compelled to render contributions and services toward bridges, paths, and roads, or other matters pertaining to the public interest. Those who enjoy the privileges of a

[1] This tract was written the year before Luther married.

[2] Written in 1526. Painter: *Luther on Education*, p. 136 *et seq.*

country are to contribute towards everything that the common interests of the country require. Now there is nothing more necessary than to educate men who are to succeed us and govern.

In a sermon on this subject, preached and published in 1530,[1] he maintains that the civil authorities are under obligation to compel the people to send their children to school, especially such as are promising; "for rulers are certainly bound to maintain the spiritual and secular offices and callings, so that there may always be preachers, jurists, pastors, scribes, physicians, schoolmasters, and the like; for this cannot be dispensed with. If the government can compel such citizens as are fit for military service to bear spear and rifle, to mount ramparts and perform other military duty in time of war, how much more has it a right to compel the people to send their children to school."

Luther earnestly appealed for the instruction of every child in the fundamental principles of the Christian religion, as well as in the common branches of secular instruction. Prior to his day there had been an education of certain classes. He appealed for the education of the masses. Every state is constantly dealing in its laws and adminis-

[1] *Predigt, dass man die Kinder zur Schule halten soll* (July, 1530). Walch ed., x., 416 *et seq.*

tration, with moral questions. Man cannot be entirely dissociated from morals, because all his relations with other men involve moral principles.

Luther declared he referred the inquiry if a man had a right to resist the emperor to the jurists, because it was not his province as a theologian to decide such a question. It is the duty of the theologian, he said, to teach the Gospel and faith in Christ. He should also exhort every one in general to perform his duty faithfully and industriously. The theologian teaches general principles concerning worldly business, *e.g.*, "Thou shalt not steal"; but the jurists define what constitutes theft. "And so in this matter concerning the emperor I, as a theologian, teach that men should obey the prescribed laws; but what the law is and what kind of a law it is, I do not know nor do I want to know; for that does not belong to my office, and it is not my province."[1]

We need to-day, as the world has ever needed, with the purely intellectual and scientific training, a deep-seated religious and moral training that will develop men of faith as well as of fortune, men of character and of honour, as well as men of secular learning. The state owes it to its own maintenance and stability to cultivate morals

[1] *Luthers Antwort von der Gegenwehr* (without date). Walch ed., x., 558, 559.

and manhood in its youth of to-day, who will be its strength to-morrow. It is of little use for the state to punish crime that has been committed, if it neglect or refuse to teach and train its youth as to what is right and what is wrong in the relations between man and man. Every child in the country needs to be taught, by and under the authority of the state, that it is wrong to kill, to steal, to lie. These are moral questions, as are hundreds of other particular acts that are made punishable, under certain conditions, by the laws of the various civilised countries. The state takes cognisance of them and punishes them; and it is purest folly to maintain that the state should not teach these matters in its public schools. The state owes it to its citizens as individuals, and it owes it to its own existence and interests. A great historian has expressed the importance of this duty of the state in these words:

As indeed there is nothing of real importance in the moral and intellectual business of human life, the source of which does not lie in a profound and more or less conscious relation of man and his concerns to God and divine things, it is impossible to conceive a nation worthy of the name, or entitled to be called, in any sense, great, whose political existence is not constantly elevated and guided by religious ideas. To cultivate, purify, and exalt these—to give

them an expression intelligible to all and profitable to all,—to embody them in outward forms and public acts, is its necessary as well as its noblest task.[1]

A writer of our own day urges such instruction because it is for the best interests of the people. He says:

We unhesitatingly advocate the doctrine that religious instruction, as well as secular, should be given in the schools of the state. But solely as a means to an end—not as an end in itself. . . . The state, therefore, that is true to its mission—the highest well-being of all the people—will use all the means in its power to have its members receive the most competent instruction available on their relation to God as on their relation to one another. . . . No government is justified in ignoring the religious convictions of its subjects. [2]

"Luther's influence on the cause of popular

[1] Ranke: *History of the Reformation in Germany*, i., 1. The president of one of our prominent American colleges has recently given utterance to the same thought in other words: "Religion is essential to the candidate for good citizenship, and the aim of the college is to train citizens for citizenship. Thou shalt love the Lord thy God with all thy mind and heart and soul and strength, and thy neighbour as thyself, and without love of this kind, intellectual endowment, the trained mind, and the most comprehensive knowledge, are nothing or worse than nothing." Henry A. Garfield, *Inaugural Address as President of Williams College*, 1908.

[2] Hoffman: *The Sphere of the State*, pp. 46, 47.

education was immediate and profound."[1] A problem such as is the one of education can be handled only by the state,[2] if it is to reach all its citizens alike. If morality is a factor in good citizenship, and it is, then it is the right and the duty of the state to teach morals, as well as secular studies in its public schools. Luther, in spite of all attempts at denial, is the founder of the modern public school and compulsory universal education.[3]

[1] Scherer: *Four Princes, or the Growth of a Kingdom*, p. 243.

[2] Kelly: *Evolution and Effort*, p. 279. To the mind of Wilhelm von Humboldt, national education seems to lie "wholly beyond the limits within which political agency should properly be confined." *Sphere and Duties of Government*, p. 71.

But the more modern opinion attaches to education the greatest importance, and in a large part of Christendom this opinion is carried out in a system of primary instruction, and special schools, and in what is called the university. Woolsey: *Political Science, or the State*, i., 227.

[3] Nuelsen: *Luther the Leader*, p. 212. "It is to Luther that Germany owes its splendid educational system in its roots and in its conception. For he was the first to plead for a universal education—for an education of the whole people, without regard to class or special life-work." Lindsay: *Luther and the German Reformation*, p. 238.

Luther's pamphlets on education, according to the historian Ranke, "have done as much for the development of secular instruction as his Address to the German Nobility has done for the secular state in general."

"In education, as in religion, Luther showed himself

FINANCE AND TRADE

Thomas Aquinas maintained that the state has an economic as well as a moral end; and Luther recognises a number of duties the state owes its citizens in respect to financial and commercial affairs. Wealth itself, honestly acquired and honourably employed, is a great good; but the state should prohibit its improper use. He declared:

> Riches are not bad in themselves, nor is poverty anything good in itself. Everything depends upon the man who uses it. God does not require of us to be without money, as some fools among the philosophers and some crazy saints among the Christians have taught. He permits some to become rich, but he does not want them to set their hearts and their love on their money. . . . The fatal mistake is made when people consider themselves the owners, while they are but stewards. . . . You may earn as much as you can in an honest way and in the fear of God, not in order to gratify your avarice, but in order to use it for others.[1]

Extortion, gambling, and usury, according to Luther, should be prohibited. Monopolies in

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great, a seer in advance of his age, the founder of a new and higher culture." He deserves "to be recognised as the greatest, not only of religious, but of educational reformers." Painter: *Luther on Education*, pp. 146, 168.

[1] Nuelsen: *Luther the Leader*, p. 237.

restraint of trade—corporate and individual alike —must be restrained. Domestic industries should be cultivated and encouraged. The state may fix and regulate prices.

A writer of our own day asserts that the regulation of corporations is one side of the modern regulation of the industrial system, and is a function added to the antique list of governmental tasks;[1] but Luther's *Appeal to the German Nobility* of 1520 calls for such regulation. He maintained that it is the duty of the state to check and control combinations operating injuriously to the people. If it is the province of government, as we are told it is, to prevent as well as to correct evils in society, then whatever is a menace to the rights of others, being a practical expression of covetousness, is to be dealt with effectually, even though as yet it has not actually invaded the rights of others, and the state can thus legislate with reference to monopolies and combinations and such things even before they begin practically to control the market and injure others by their methods of doing business.

In his *Appeal to the German Nobility*,[2] Luther

[1] Wilson: *The State*, p. 626.

[2] *An den christlichen Adel deutscher Nation von des christlichen Standes Besserung* (1520). Weimar ed., 6 Band, 381 *et seq.* Wace and Buchheim: *Luther's Primary Works*, p. 161 *et seq.*

declared that without doubt the greatest misfortune of the Germans is buying on usury.[1] But for this many a man would have to leave unbought his silk, velvet, cloth of gold, spices, and other luxuries. The system, he says, has not been in force for more than one hundred years, and has already brought poverty, misery, and destruction on almost all princes, foundations, cities, nobles, and heirs. If it continue for another hundred years Germany will be left without a farthing, and we shall be reduced to eating one another. The Devil, he declares, invented this system, and the Pope has done an injury to the whole world by sanctioning it. Luther therefore urges that each man consider the destruction of himself and his family, which is no longer merely at the door, but has entered the house. And let the emperors, princes, lords, and corporations see to the condemnation and prohibition of this kind of trade,

[1] Receiving interest for the use of money was regarded as a crime by nearly all the civilised world up to the middle of the sixteenth century. This view was due mainly to an unauthorised interpretation of a passage in the Mosaic law on the subject. Aristotle was likewise quoted as against the principle. But while money does not produce money, yet it may be exchanged for wheat, corn, or other things that reproduce themselves and increase wealth. The first legislation enacted allowing the collection of interest for the use of money and fixing a maximum rate (10%) was that of England in 1546. Hoffman: *The Sphere of the State*, p. 149.

without considering the opposition of the Pope and all his justice and injustice, nor whether livings or endowments depend upon it. Better a single fief in a city based on a freehold estate or honest interest than a hundred based on usury. A single endowment on usury is worse and more grievous than twenty based on freehold estate. "Doubtless," he continues further, "we should also find some bridle for the Fuggers and similar companies. Is it possible that in a single man's lifetime such great wealth should be collected together, if all were done rightly and according to God's will? I am not skilled in accounts, but I do not understand how it is possible for one hundred guilders to gain twenty in a year, or how one guilder can gain another, and that not out of the soil, or by cattle, seeing that possessions depend not on the wit of men, but on the blessing of God. I commend this to those that are skilled in worldly affairs. I, as a theologian, blame nothing but the evil appearance, of which St. Paul says: 'Abstain from all appearance of evil.'[1] All I know is that it were much more godly to encourage agriculture and lessen commerce; and that they do the best who, according to the Scriptures, till the ground to get their living, as we are all commanded in Adam: 'Cursed is the

[1] *1 Thessalonians* v., 22.

ground for thy sake. . . . Thorns also and thistles shall it bring forth to thee. . . . In the sweat of thy face shalt thou eat bread.'[1] There is still much ground that is not ploughed or tilled."

"I do not see," he says again in the same document, "many good manners that have ever come into the land through commerce, and therefore God let the people of Israel dwell far from the sea and not carry on much trade."

The discoveries and conquests of new worlds gave a marked impetus to commerce in the early part of the sixteenth century. A more luxurious mode of living was practised. Companies were formed which bought up the necessaries of life and raised the prices. The importance of agriculture was yielding to commerce the opportunity for greater wealth and larger returns. Luther's pamphlet on *Trade and Usury* has been called by Professor Schmoller "the most interesting treatise on social and economic questions written during the whole period of the Reformation."[2] Interest should be collected, in Luther's view, only where the debtor has won more than a fair return for his trouble. The lender should assume the risk and bear the loss of his creditor's reverses. Luther denounces extortionate prices for the

[1] *Genesis* iii., 17–19.

[2] Quoted by Nuelsen: *Luther the Leader*, p. 236.

necessaries of life, charged solely to make money. Merchants are entitled, he holds, to a fair compensation for their venture and their work, but they have no moral right to charge extortionate prices merely to acquire wealth. A court might be instituted with authority to regulate and fix prices,—an arrangement that would be fair to producer and consumer alike.

Luther criticised the foreign commerce of his day because it carried so much of Germany's gold out of the country, and cultivated a spirit of extravagance and luxury. He advocated the encouragement of domestic industries and domestic products. "Germany can produce everything that we need," he declared: "why send money to foreign nations for the purpose of purchasing goods which are not necessary at all? God has cursed us Germans, so that we throw our money, our silver, and our gold into the hands of foreign nations, to make them rich, and remain beggars ourselves. England would have less gold if we would not buy clothes of her. The King of Portugal would have less money if we left him his spices. Just figure up how much money is sent to foreign countries without any just cause, and you will be surprised that there is a penny left in our German lands." [1]

[1] Nuelsen: *Luther the Leader*, p. 236.

As the penalty for extortion, whether in the sale of goods or property, or for the loan of money, Luther proposed confiscation of property and even banishment.

As to whether gamblers are thieves and whether the stakes won should be given back, it is clear, says Luther,[1] that those who gamble sin through covetousness and avarice,—at least those who gamble for the sake of the stake—and therefore in God's sight are thieves and covet the things of others. For no one gambles with another because he desires to give that which is his own to the other,—for he could do that without gambling, nor does he do so that he may thereby lose his own. Neither does he do so in the other's behalf, as if it were his own. Therefore gambling is always against love and is base covetousness, for the gambler seeks something for himself at another's loss, or at least seeks that which is the other's not as his own. But both players play their stakes with knowledge and consent, so that the loser loses knowingly and wilfully. The best punishment would be, if it could be brought about, that both should lose, or at least that the state treasury should secure the winnings of both because

[1] *Die zehn Gebote dem Volk zu Wittenberg gepredigt* (1516–1517). *Das siebente Gebot: Du sollst nicht stehlen.* Walch ed., iii., 1312 *et seq.*

both, by their gambling, violate the command of the prince and the spiritual law of the church.

Luther condemned, as did his age in general, the investment made in the spirit of avarice, to increase worldly possessions and indulge in an idle life. In the law of Moses, Luther sets forth in the sermon just cited, labour and sorrow are laid upon all men: "In the sweat of thy face shalt thou eat bread"[1]; and Job declares: "Man is born unto trouble [labour], as the sparks fly upward."[2] There are cases, Luther concedes, in which interest may be properly taken on loans, such as in the cases of (1) the aged, children, and the sick, for they have trouble enough; (2) those who are engaged in vocations from which they receive no return, such as the clerical orders, priests, and prelates, who are engaged in studies and with the word of God, and those, too, who serve the community and the needs of others, as princes, counsellors, and city and town authorities. Otherwise, if God gave to each person in accordance with his work, what would the idlers receive who misuse their wealth only for gain, gain only for idleness, idleness only for a luxurious life, and luxurious life only for sin? The cultivation of avarice and covetousness is the danger to which Luther here directs attention.

[1] *Genesis* iii., 19. [2] *Job* v., 7.

In a sermon on the subject of *Trade and Commerce*,[1] Luther goes into a lengthy argument as to the Christian duty of men to treat others justly and fairly, citing the golden rule as the highest standard of business conduct. No fairer or briefer guide can be given for all business affairs than that every man in dealing with others should set before himself the command: Whatsoever you would that another should do to you, likewise do to him; and: Thou shalt love thy neighbour as thyself. Viewing the principle of usury as unchristian, ungodly, and unnatural, Luther severely condemns those who demand and receive extortionate rates of interest for loans. He declares, however, that it is not his province to say where four, or five, or six per cent. should be charged. He leaves that to the judgment of the law to determine where there are good grounds for the higher rate. The authorities should see that

[1] *Von Betrug und Uebervortheilung im Handel und Wandel, insonderheit vom Zins und Wucher: Grosser Sermon vom Wucher* (1519–1520). Weimar ed., 6 Band, 33 *et seq.* Also see, for Luther's further discussion of these subjects of Wucher, Zinskauf, etc., *Bedenken an den Kanzler Gregor Brück vom Zinskauf* (Oct. 18, 1523), Walch ed., x., 912 *et seq.; Herzog Johann Friedrichs zu Sachsen Schreiben an D. M. Luther* (1524), and *Bedenken D. Martin Luthers* (1524), an answer to the preceding letter of inquiry. Walch ed., x., 352 *et seq.*

excessive and oppressive rates are not taken. Referring to some of the commercial thieves of his day, he calls them, not human beings, but wolves and wild beasts, who do not believe in a God. The emperor, kings, princes, and lords should watch these matters, and rescue and save their lands and peoples from the usurer's gullet. The Imperial Diet should treat this as one of the most important and pressing subjects calling for its consideration.

In a treatise on the subject of *Trade and Usury*, published a few years later,[1] Luther condemns the importation from Calcutta, East India, and elsewhere, of expensive silks, gold-work, and spices, that take from the people and out of the country its gold, yet ministering to no need, but only to adornment. "God has condemned us Germans to throw away our gold and silver in foreign lands and make all the world rich, but to remain beggars ourselves."

Discussing in this same paper the evils of trade of his day, he says "so far as they affect the revenue, we leave them to the consideration of the princes and lords, that they may do their duty in the matter." Merchants have a common rule that is their motto and the foundation of all

[1] *Von Kaufshandlung und Wucher* (1524). Weimar ed., 15 Band, 279 *et seq.*

finance: "I may dispose of my goods at as high a price as I can." They look upon that as a right. But it should not be "I may dispose of my goods at as high a price as I can or will," but "I may dispose of my goods at as high a price as I should, or as is right and fair." The best and surest way of regulating this matter, Luther suggests, would be for the civil authorities to appoint and entrust fit and capable persons to inspect all goods and their cost, and fix their value. In view of the fact that the Germans are so occupied with other things, drinking and dancing, as not to tolerate such a regulation and institution, and it is not therefore to be expected, the next best counsel is that the value of goods be determined by the price given and taken in the public market or by the practice of the country. The amount of profit or gain to which a man is entitled in the case of trade and work cannot be calculated better than by determining the time and the amount of the labour expended, and, as compared with a common day labourer, how great the labour and the risk involved; for difficult and important work and a large amount of time are entitled to greater and more reward.

Luther condemns the practice among merchants and others in his day of going surety. Buying on credit cultivates the spirit of avarice. Some

merchants sell on time rather than for cash so as to make a greater profit. Some sell their goods at a higher rate than the current market price, and run up the prices of goods for no other reason than that they know there is no further supply of the same in the country and people must have them. All such are public robbers, thieves, and usurers.

Then there are those who buy up the entire supply of a certain article or ware in a country or a city, that they may have its control absolutely within their own power, and then are able to set, increase, and quote prices as high as they wish or can. The imperial and temporal laws prohibit it and term it monopoly. It should not be permitted; and princes and lords, if they wish to do their duty, should punish and stop it. For such tradesmen act as if all God's creatures and things were created for and given to them alone and they may do with them as they please. Such monopolists are not worthy to be called men, or to live among people. The civil authorities would do right here if they would confiscate all the property of such monopolists and banish them from the country.

After discussing various other methods of tradesmen, middlemen, and speculators, who seek the greatest possible profit from sales, made in fact or on paper, Luther declares that such finan-

ciers are called cut-throats, but are looked upon as shrewd people. He denounces agreements made between different merchants to regulate or control prices with a view to greater profit; the practice of selling at high prices and buying back again from the same parties at much lower prices under misrepresentation; increasing the weight of certain commodities by storing them in damp buildings; selling in dark rooms, where the purchaser can be readily deceived; placing the best at top and bottom, and the worst inside; so that trade deception has no limit, and no merchant dare trust another farther than he can see and examine. It is the duty of the princes to punish and prohibit unfair and unjust methods of trade.

Luther sees in the commercial companies and associations of his day monopolistic combinations that drive out of business the smaller merchants and tradesmen—as pike destroy the smaller fish in the water—control the market, and charge extortionate prices. Kings and princes should investigate these matters, he argues, and regulate them in accordance with strict justice. But while they have those thieves hung who steal a gulden, or half a gulden, they trade and do business with those who rob from the whole world and steal more than all others. With such extortionate and unjust practices before

his mind, Luther declared no one therefore dare inquire if he may be with good conscience in such combinations or associations. There is no other advice than keep out. If the associations remain, justice and honesty must perish. If justice and honesty are to abide, the associations must perish.[1]

Towards the close of his life, Luther addressed an open letter to the parish clergy exhorting them to preach against usury.[2] After referring to the increasing extent and evils of it, he says, among other things: "Concerning lending and borrowing, where a person loans money and demands or receives therefor more or better, that is usury, condemned in all justice. Therefore all those who take five, six, or more on the hundred, whether gold or grain, or other commodities, are usurers. It is stolen goods."

But he makes an important qualification. He asserts it is fair and according to reason and natural law that the borrower return the principal with any damage or loss (*Schaden*) that may have been incurred by the lender in making the loan.

[1] "*Sollen die Gesellschaften bleiben, so muss Recht und Redlichkeit untergehen. Soll Recht und Redlichkeit bleiben, so müssen die Gesellschaften untergehen.*"

[2] *An die Pfarrherren, wider den Wucher zu predigen* (1540). Walch ed., x., 860 *et seq.*

This is so clear and plain that, though all law and law books were lost, reason, however weak it might be, would dictate it. The works on jurisprudence term this damage "*Interesse*," in Latin, and such a loan is certainly not usurious, but a praiseworthy and honourable service and good work. The determination of what is fairly due the lender—whether money or property—is the function of the jurists; or, best of all, it may be settled by means of competent arbitrators, expert referees, or by mutual friends. No law can be enacted so pointed and definite as to include all cases or circumstances. But this is a legal question for the jurists.

Luther then refers to large profits made in markets and at fairs, such as thirty and forty per cent. The man who has a million florins would receive, at such a rate, an annual income of 400,000 florins,—the income of a king, and with it would incur no risk, either in body or estate, and would not labour, but sit back of the stove and roast apples. A thief could thus remain at home, and swallow the whole world in ten years.

Inasmuch as the temporal authorities are inert and lazy in this matter, or in part too weak, to restrain this distress, let the clergy teach and warn the people, Luther advises, to look upon the usurers as incarnate devils, and upon Turks,

Tartars, and heathen as angels as compared with usurers. The school teachers should in like manner train the youth. The princes and lords will have to suffer for bearing the sword in vain and permitting such murderers, robbers, usurers, and skinflints to have free play in their territories.

MARRIAGE AND MORALITY

Prostitution

It is the province of the state forcibly to abate social immoralities. Under whatever guise, though that of a religious creed or teaching, gross immorality cannot be and must not be tolerated by the state. Writing in an age, as compared with ours, of relative coarseness, obscenity, immodesty, and immorality,[1] Luther held that the civil government should regulate, indeed encourage, marriage, and that it should prohibit prostitution. In his *Appeal to the German Nobility*, he argues:

[1] A most interesting study of this subject will be found in chapters vi and vii of Vol. VIII, entitled *Women of the Teutonic Nations*, by Dr. Hermann Schoenfeld, 1907, in the series *Women in all Ages and in all Countries*. At the end of the fifteenth and the beginning of the sixteenth century, prostitution had reached alarming proportions in Germany. Shameless immorality prevailed in varying degrees among all classes.

Is it not a terrible thing that we Christians should maintain public brothels, though we all vow chastity in our baptism? I well know all that can be said on this matter; that it is not peculiar to one nation, that it would be difficult to demolish it, and that it is better thus than that virgins, or married women, or honourable women should be dishonoured. But should not the spiritual and temporal powers combine to find some means of meeting these difficulties without any such heathen practice? If the people of Israel existed without this scandal, why should not a Christian nation be able to do so? How do so many towns and villages manage to exist without these houses? Why should not great cities be able to do so? . . . It is the duty of those in authority to seek the good of their subjects. But if those in authority considered how young people might be brought together in marriage, the prospect of marriage would help every man and protect him from temptations.

In Luther we find a striking departure from the attitude and teaching of the church prior to and in his day. By the ecclesiastical authorities it was held that the church alone properly had jurisdiction over the question of marriage, and the canonical laws included civil as well as spiritual affairs. Luther repudiated these canonical laws on the subject of marriage, and separated its civil from its ecclesiastical aspect. He main-

tained that marriage, as the basis of all family rights, lies entirely within the province of the state and must be regulated of necessity by the civil government. "Marriage and the married state," he declared, "are civil matters, in the management of which we priests and ministers of the church must not intermeddle. But when we are required, either before the church, or in the church, to bless the pair, to pray over them, or even to marry them, then it is our bounden duty so to do."[1]

THE PROBLEM OF PAUPERISM

In the beginning of the sixteenth century Germany was overrun with mendicant monks, pilgrims, wandering students, and hordes of aimless beggars, vagrants, and shiftless criminals. Luther realised, as does the modern age, that this is a subject that can be handled only by the state.[2] His statement of the problem and his method for its solution are so interesting as to merit attention. In his *Appeal to the German Nobility* he asserts that it is one of the most urgent necessities to abolish all begging in Christendom. No one should go about begging among

[1] *Traubüchlein.* See Geffcken: *Church and State*, i.. 303. Also see *Tischreden*, Walch ed., xxii., 861, sec. 29; 1159, sec. 70; and 1174, sec. 97.

[2] Kelly: *Evolution and Effort*, p. 279.

Christians. "It would not be hard to do this if we attempted it with good heart and courage." Each town should support its own poor and should not allow strange beggars to come in, whatever they may call themselves, pilgrims, or mendicant monks. Every town should feed its own poor; and, if it were too small, the people in the neighbouring villages should be called upon to contribute. As it is, they have to support many knaves and vagabonds under the name of beggars. "If they did what I propose, they would at least know who were really poor."

There should also be an overseer or guardian, who should know all the poor, and should inform the town council, or the priest, of their requirements; or some other similar provision might be made. He goes on to say:

There is no occupation, in my opinion, in which there is so much knavery and cheating as among beggars, which could easily be done away with. This general unrestricted begging is, furthermore, injurious to the common people. I estimate that, of the five or six orders of mendicant monks, each one visits every place more than six or seven times in the year. Then there are the common beggars, emissaries and pilgrims. In this way I calculate every city has a blackmail levied on it about sixty times a year, not counting rates and taxes paid to the civil government

and the useless robberies of the Roman See; so that it is to my mind one of the greatest of God's miracles, how we manage to live and support ourselves. . . .

If a man will be poor, he should not be rich. If he will be rich, let him put his hand to the plough, and get wealth himself out of the earth. It is enough to provide decently for the poor, that they may not die of cold and hunger. It is not right that one should work that another may be idle, and live ill that another may live well, as is now the perverse abuse, for St. Paul says: "If any would not work, neither should he eat."[1] God has not ordained that any one should live of the goods of others, except priests and ministers alone, as St. Paul says in *1 Corinthians* ix., 14, for their spiritual work's sake, as Christ says to the Apostles: "The labourer is worthy of his hire."

In an earlier tract,[2] Luther declares there should not be any begging or suffering from want. Yet there is so much begging that it has become an honour. And not only do laymen beg, but it is carried on by the spiritual priesthood as a precious or meritorious thing. The spiritual and temporal authorities would not act unjustly if they were to prohibit all begging. To do away with such

[1] *2 Thessalonians* iii., 10.

[2] *Von Betrug und Uebervortheilung im Handel und Wandel, insonderheit vom Zins und Wucher. Grosser Sermon vom Wucher* (1519–1520). Weimar ed., 6 Band, 33 *et seq.*

burdens and impositions, the pope, bishops, kings, princes and lords should take such action that, either through their own orders or in a general council, it might be enacted and ordered that each city and village provide for its own poor, that begging cease, or at least that each place does not impose its poor upon other places, as is now the undesirable practice.

Luther was sufficiently interested in an old book entitled the *Liber Vagatorum* that he published it with a preface of his own in which he says:

This little book about the knavery of beggars was first printed by one who calls himself "*Expertus in Truffis*," *i.e.*, a fellow right well knowing in roguery, which the book very well proves. . . . Princes, lords, counsellors of state, and everybody should be prudent and cautious in dealing with beggars, and should learn that, whereas people will not give and help honest paupers and needy neighbours as ordained by God, they give by persuasion of the Devil, and contrary to God's judgment, ten times as much to vagabonds and desperate rogues. . . . For this reason every village and town should know their own poor, as written down in the register, and assist them. But as to outlandish and strange beggars, they ought not to be borne with unless they have proper letters and certificates; for all the great rogueries mentioned in

this book are done by them. If each town would only keep an eye on its own paupers, such knaveries would soon cease. I have myself of late years been cheated and befooled by such tramps and liars more than I like to confess.[1]

Luther blamed the teachings of the church of his day as to the merit of making pilgrimages for developing and cultivating the vagabond life. A man's first duty is to provide a support for his wife and family, and then assist the needy and worthy poor of his own community. He proposes, if not the abolition, at least a strict supervision of pilgrimages to Rome. It often happens, he declares,[2] that a man goes on a pilgrimage to Rome, spends fifty or a hundred guilders, more or less, which no one has commanded him, while his wife and children or those dearest to him are left at home in want and misery. . . . These pilgrimages are the reason for there being so many beggars, who commit numberless villainies, learn to beg without need, and get accustomed to it. Hence arises the vagabond life, with attend-

[1] Lindsay: *Luther and the German Reformation*, pp. 201, 202.

[2] *An den christlichen Adel deutscher Nation von des christlichen Standes Besserung* (1520). Weimar ed., 6 Band, 381 *et seq.*

ant and consequent miseries. The priest or the temporal authorities should supervise this matter and tell the man proposing to make a pilgrimage to spend his money and the labour the pilgrimage would cost on a thousand-fold better work, namely, on his family and his poor neighbours. If a man can afford it, and wishes to travel out of a desire to see other cities and countries, of course he may be allowed to do so.

In another tract,[1] Luther declared that it is the province of agriculture to nourish, and of the military to defend. The emperor or the prince should see that the latter are armed and ready for service, and that those engaged in the former duty intelligently improve the maintenance; but they should not endure useless people, who do not help to defend or support, but only consume, and lounge and idle away their time; but should expel them from the country, or put them to work, just as the bees drive out from the hive the drones that do not work, yet consume the honey of the other bees.[2]

[1] *Ob Kriegsleute auch in einem seligen Stande sein können* (1526). Weimar ed., 19 Band, 616 *et seq.*

[2] Interesting studies of the problem of pauperism will be found in the following works: Hoffman: *Sphere of the State.* Chap. x is devoted to "The state in its relation to the poor." Woolsey: *Political Science.* "The state's relations to the poor" is discussed in i., 232 *et seq.*

SUMPTUARY LAWS

Luther was an advocate of the simple life. He denounces the extravagance of his day in eating and drinking, in dress and display, alike. It was an age of marked contrast between rich and poor, between some living in highest luxury and others in deepest want. There were brilliant lights and dark shadows. He strongly recommends and urges,[1] therefore, the enactment of a general law and consent of the German nation against profusion and extravagance in dress, which is the cause of so much poverty among the nobles and the people. "Surely God has given to us," he says, "as to other nations, enough wool, fur, flax, and whatever else is required for the decent clothing of every class, and it cannot be necessary to spend such enormous sums for silk, velvet, cloth of gold, and all other kinds of outlandish stuff. . . . Every man wishes to be every other man's equal, and this causes and increases pride and envy among us, as we deserve, all which would cease, with many other misfortunes, if our self-will would but let us be gratefully content with what God has given us."

[1] *An den christlichen Adel deutscher Nation von des christlichen Standes Besserung* (1520). Weimar ed., 6 Band, 381 *et seq.* Wace and Buchheim: *Luther's Primary Works*, p. 161 *et seq.*

Regarding other forms of extravagance he speaks as follows:

It is similarly necessary to diminish the use of spices, which is one of the ships in which our gold is sent away from Germany. God's mercy has given us more food, and that both precious and good, than is to be found in other countries. I shall probably be accused of making foolish and impossible suggestions, as if I wished to destroy the great business of commerce. But I am only doing my part. If the community does not mend matters, every man should do it for himself.

Then there is the excess in eating and drinking, for which we Germans have an ill reputation in foreign countries, as our special vice, and which has become so common, and gained so much the upper hand, that sermons avail nothing. The loss of money caused by it is not the worst; but in its train come murder, adultery, theft, blasphemy, and all vices. The temporal power should do something to prevent it. Otherwise it will come to pass, as Christ foretold, that the last day shall come as a thief in the night, and shall find them eating and drinking, marrying and giving in marriage, planting and building, buying and selling,[1] just as things go on now, and that so strongly that I apprehend lest the day of judgment be at hand, even now when we least expect it.

For a similar reason, Luther urged the aboli-

[1] *Matthew* xxiv., 38. *Luke* xvii., 26.

tion of all saints' days, excepting only Sunday. Aside from the spiritual evils which he alleged were involved in their keeping, he declared that these saints' days inflict bodily injury on the common man in two ways. He loses a day's work, and he spends more than usual, besides weakening his body and making himself unfit for labour, as we see every day; and yet no one tries to improve it. If anything is contrary to God's will and harmful to men in body and soul, it is the duty of every community, every council, and every governmental authority to prevent and abolish it.

A famous German, writing more than a century ago, declared "that the state must wholly refrain from every attempt to operate directly or indirectly on the morals and character of the nation, otherwise than as such a policy may become inevitable as a natural consequence of its other absolutely necessary measures; and that everything calculated to promote such a design, and particularly all special supervision of education, religion, sumptuary laws, etc., lies wholly outside the limits of its legitimate activity."[1]

The modern state does not seriously attempt to make its subjects virtuous or frugal by law;[2] but

[1] Humboldt: *Sphere and Duties of Government*, p. 113.

[2] Wilson: *The State*, p. 627.

it has a large field of legislation looking to the health, safety, and lives of the people, in the way of pure food and drug laws, the inspection of cattle, dressed meats and other food stuffs, prohibition of the sale of poisons except on physician's prescription, and the various laws regulating, controlling, or prohibiting the sale of intoxicating liquor.

CHAPTER IX

LIMITS OF THE STATE

THE ancient state asserted and enforced the right to interfere in every relation of life. No field of activity was recognised by the state as pertaining absolutely and solely to the individual. The citizen was born and was expected to live for the state, and it was for the state to determine his life.

In the Middle Ages, among the Teutons themselves, with all their innate love of liberty,[1] there

[1] There are two possible views as to the relation between the state and the individual. "According to the one the entire sphere of right of the individual is the product of state concession and permission. According to the other the state not only engenders rights of the individual, but it also leaves the individual that measure of liberty which it does not itself require in the interest of the whole. This liberty, however, it does not create but only recognises.

"The first conception is based upon the idea of the state's omnipotence as it was most sharply defined in the absolutist doctrines of the sixteenth and seventeenth centuries. . . .

"The second theory on the other hand is that of the Teutonic

was no freedom of thought, of speech, or of religious belief. To lose standing in the Roman Church was to lose standing in the state. Excommunication from the former was but the forerunner of the ban of the latter. The man who differed in his views from the teachings of that Church was without the pale and the protection of the state.[1] His civil rights, such as he had, ceased to exist. His faith, his thought, his speech, his writings, his very conscience, were all alike to be determined by ecclesiastical authority. Contrary to that authority, he must not harbour a moment's speculation, or speak a single word. This applied not only to religious creed and worship, but to all political, scientific, economic, and social questions.[2] The state was declared by the Church of Rome to be its servant, obligated to do

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conception of right. . . . However much the boundaries of that recognised liberty have changed in the course of time, the consciousness that such boundaries existed was never extinguished in the Teutonic peoples even at the time of the absolute state."

Jellinek: *The Declaration of the Rights of Man and of Citizens*, pp. 95–97.

[1] The Council of Constance, for example, in the case of John Huss, declared that an obstinate heretic was not entitled to any privileges, and that no law, human or divine, required men to observe faith with such a one. Hallam: *Middle Ages*, i., 157.

[2] As in the cases of Copernicus and Galileo.

its bidding. Status in the state was dependent upon status in the church. The state was but the armed force of the church to enforce its decrees and execute its will. As against this view that the church was supreme over the state, Luther declared the equality of cleric and layman, and demanded the emancipation of the state from the control of the church. He conceded the jurisdiction and authority of the church in matters of doctrine, morals, and internal administration; that it is properly concerned with the spiritual, the unseen, the dissemination of religious truth, the cultivation of the heart. Its adherents, in all secular matters, are not independent of but subject to civil authority. All legislative, executive, and judicial authority in temporal affairs belongs exclusively to the jurisdiction of the state. When necessary, Luther asserted that the state may go so far as to protect and defend the church, as the different members of the human body assist one another when occasion demands; but "as the church is not to interfere in civil matters, so the state has as little right to intermeddle in matters purely ecclesiastical, except where life and property are at stake."[1]

Luther's court of last resort was the word of

[1] Geffcken: *Church and State*, i., 304.

God, on which he took a determined stand; not as interpreted by a hierarchy, or by a spiritual potentate, or by any other association or individual —for he failed in his appeal to the Roman Pope and again in his appeal to a general council of the Roman Church—but as read and interpreted by the individual himself. Where that word speaks, he refused to yield to any other authority, secular or ecclesiastical. Unless convinced by the word of God or by cogent reason, he declared at the Diet of Worms, that he was wrong, he could not and would not retract what he had written. The individual conscience, he maintained, cannot be bound. Each man must determine the meaning of the Word for himself. And the inevitable result of this principle is individual liberty. He held that the state's jurisdiction covers all persons, ecclesiastical and lay, within its borders; that the church has no jurisdiction over temporal affairs; that coercion is the prerogative of civil government exclusively; that obedience to legitimate civil government is the duty of the individual; but that submission, however, is not a duty, and self-defence is a right of the individual in case of tyranny or a command to do that which is explicitly prohibited by the word of God; that religious and civil liberty is the right of the individual; and that civil government is to

be viewed as a trust to be executed in the best interests of the governed. The relation of man with man, the external life as it affects others is under the control of the state. Even religious belief or creed may become subversive to the peace and safety of the community, and force may be properly used to suppress the disorder. The proceedings of the fanatics had early led Luther to a recognition of this principle. The peace and order of the state must be maintained against disorder, personal violence, destruction of property, public immorality and treason, though they come in the guise of religion. The state must grant liberty of conscience, freedom of speech and the privilege of the press. These are inalienable rights belonging alike to every individual, subject only to the limitation that they are not permitted to encroach upon the rights of others. The natural, the almost inevitable, consequence of the declaration and recognition of these principles was eventually the establishment of modern, constitutional law. It was not in consequence of his teaching, but merely in spite of it, that for the next two centuries monarchical government became more autocratic, as feudalism was being transformed into civil government. It has been shown in a previous chapter that the subject is not bound to render obedience to a government

that has not been legally established and is not constitutionally conducted. All through Luther's writings, and in his own acts as well, is to be read the right of the individual to think and believe in matters political, religious and otherwise, as he sees proper. His is the right to read the Bible and any other book he may desire. He has the right to confer and counsel with others, to express and declare his views pro and con, in speech or print, so long as he abides by and remains within the laws of the land. Luther firmly believed in the liberty of the individual as to conscience, speech and press. The search for truth must be untrammelled.

In the *Appeal to the German Nobility*,[1] Luther declares that no one in Christendom has any authority to do harm, or to forbid others to prevent harm being done. He declares that faith must be kept between a state and its citizens, between a ruler and his subjects, between man and man. He maintains that it is not right to put a man to death because of religious belief or unbelief. In this *Appeal* he says:

No one can deny that it is breaking God's commandments to violate faith and a safe-conduct, even

[1] *An den christlichen Adel deutscher Nation von des christlichen Standes Besserung* (1520). Weimar ed., 6 Band, 381 *et seq.*

though it be promised to the Devil himself, much more then in the case of a heretic. . . . Even though he [John Huss] were a heretic, however bad he may have been, yet he was burned unjustly and in violation of God's commandments, and we must not force the Bohemians to approve this, if we wish ever to be at one with them. Plain truth must unite us, not obstinacy. It is no use to say, as they said at the time, that a safe-conduct need not be kept if promised to a heretic; that is as much as to say, one may break God's commandments in order to keep God's commandments. They were infatuated and blinded by the Devil, that they could not see what they said or did. God has commanded us to observe a safe-conduct; and this we must do though the world should perish; much more then where it is only a question of a heretic being set free. We should overcome heretics with books, not with fire, as the old Fathers did. If there were any skill in overcoming heretics with fire, the executioner would be the most learned doctor in the world; and there would be no need of study, but he that could get another into his power could burn him.

In the same year that he wrote his *Appeal to the German Nobility*, Luther published a tract entitled *Concerning Christian Liberty*,[1] in which he discusses two propositions concerning Christian

[1] *Von der Freiheit eines Christenmenschen* (1520). Weimar ed., 7 Band, 12 *et seq.*

liberty and servitude which, at first glance, may seem contradictory, but which, in his explanation, supplement one another. He says: (1) a Christian man is the most free lord of all, and subject to none; (2) a Christian man is the most dutiful servant of all, and subject to every one. In this work, Luther shows a breadth of view recognising the liberty of the individual and charity towards others in non-essential matters, both as to theory and practice; he urges obedience to authority, save when it contradicts the teaching of the word of God; for the Christian freeman, he says, will speak thus: "I will fast, I will pray, I will do this or that which is commanded me by men, not as having any need of these things for justification or salvation, but that I may thus comply with the will of the pope, of the bishop, of such a community, or such a magistrate, or of my neighbour as an example to him; for this cause I will do and suffer all things, just as Christ did and suffered much more for me, though He needed not at all to do so on His own account, and made Himself for my sake under the law, when He was not under the law; and although tyrants may do me violence or wrong in requiring obedience to these things, yet it will not hurt me to do them, so long as they are not done against God."

A few years later, in his tract on *Secular Author-*

ity,[1] he considers the length of the arm of civil authority and how far its hand properly reaches:

Unbearable loss follows where it is given too much room, and it is likewise not without loss where it is too restricted. Here it punishes too little; there it punishes too much. Although it is more desirable that it offend on the side of punishing too little than that it punish too severely; because it is always better to permit a knave to live than to put a good man to death, inasmuch as the world still has and must have knaves but has few good men.

In the first place, it is to be noted that the two classes of the human race, one of whom is in the kingdom of God under Christ and the other in the kingdom of the world under civil authority, have two kinds of laws, for every kingdom must have its laws and its rights, and no kingdom or régime can stand without law, as daily experience shows. Temporal government has laws that do not reach farther than over person and property and what is external on the earth; for God will not permit any one to rule over the soul of man but Himself. Therefore where temporal power presumes to give laws to the soul, it touches God's rule and misleads and destroys the souls. We wish to make that so clear that men may comprehend it, in order that our knights, the princes and bishops, may see what fools they are when seeking

[1] *Von weltlicher Oberkeit, wie weit man ihr Gehorsam schuldig sei* (1523). Weimar ed., *11* Band, 229 *et seq.*

to force people by their laws and commandments to believe thus or so. When a man lays a human law or commandment upon the soul, that it must believe this or that, as the man prescribes, it is assuredly not God's word. . . . Therefore it is a thoroughly foolish thing to command a man to believe the church, the Fathers, the councils, although there is nothing on it from God's word.

Now tell me, how much sense does the head have that lays down a command on a matter where it has no authority? Who would not hold as of unsound mind the person who would command the moon to shine when he wishes? How fitting would it be if the Leipsic authorities would lay down laws for us at Wittenberg, or we at Wittenberg for the people of Leipsic? Moreover, let men thereby understand that every authority should and may concern itself only where it can see, know, judge, sentence, transform, and change; for what kind of a judge is he to me who would blindly judge matters he neither hears nor sees? Now tell me, how can a man see, know, judge, sentence, and change the heart? For that is reserved to God alone. A court should and must be certain when it sentences and have everything in clear light. But the soul's thoughts and impulses can be known to no one but God. Therefore it is futile and impossible to command or to compel a man by force to believe thus or so. For that purpose another grip is necessary. Force does not accomplish it. For my ungracious lords, pope and bishops should

be bishops and preach God's word; but they leave that and have become temporal princes and rule with laws that concern only person and property. They have reversed the order of things. Instead of ruling souls (internally) through God's word, they rule (externally) castles, cities, lands, and people, and kill souls with indescribable murder. The temporal lords should, in like manner, rule (externally) land and people; but they leave that. They can do nothing more than flay and shave the people, set one tax and one rent on another; there let loose a bear and here a wolf; respect no right, or faith, or truth, and conduct affairs so that robbers and knaves increase in number; and their temporal régime lies as far beneath as the régime of the spiritual tyrants. Faith is a matter concerning which each one is responsible for himself; for as little as another man can go to heaven or hell for me, so little can he believe or not believe for me; and as little as he can open or close heaven or hell for me, so little can he drive me to belief or unbelief. We have the saying from St. Augustine: "No one can or should be compelled to believe." The blind and miserable people do not see what a vain and impossible thing they undertake; for, however imperiously they command and however hard they drive, they cannot force people any farther than that they follow with the mouth and the hand. They cannot compel the heart, though they should break it. For true is the maxim: *Gedanken sind zollfrei*. When weak consciences are driven by force to lie,

deceive, and say otherwise than they believe in the heart, they burden themselves also with heavy sin; for all the lies and false witness given by such weak consciences rest upon him who forces them.

Christ Himself clearly recognised and concisely stated this truth when He said: "Render therefore unto Cæsar the things which are Cæsar's; and unto God the things which are God's."[1] Now, when imperial authority stretches itself over into God's kingdom and authority and does not keep within its own separate jurisdiction, this discrimination between the two realms has not been made. For the soul is not under the authority of the emperor. He can neither teach nor guide it, neither kill it nor give it life, neither bind nor loose, neither judge nor sentence, neither hold nor let alone; which necessarily would exist had he authority to command and lay laws over it; but over body, estate, and honour he has authority so to do, for they are under his jurisdiction and power.

David long ago expressed it briefly: "The heaven, even the heavens, are the Lord's: but the earth hath he given to the children of men."[2] That is to say, over what is on the earth and belongs to the temporal earthly kingdom, man has power from God; but what belongs to heaven and to the eternal kingdom is under the Lord of heaven alone. But finally, this is the meaning of St. Peter: "We ought to obey God rather than men."[3] He here clearly marks a limit to

[1] *Matthew* xxii., 21.
[2] *Psalms* cxv., 16.
[3] *Acts of the Apostles* v., 29.

temporal authority; for were men obliged to observe everything that civil authority wished, the command "We ought to obey God rather than men" would have been given in vain.

If, now, your prince or temporal lord command you to believe this or that, or to dispense with certain books, say: "I am under obligations to obey you with body and estate; command me within the compass of your authority on earth and I will obey you. But if you command me as to belief, and order me to put away books, I will not obey, for then you become a tyrant and overreach yourself, and command where you have neither right nor power." If your goods are taken and your disobedience is punished, you are blessed and you may thank God that you are worthy to suffer for God's word. When a prince is in the wrong, his subjects are not under obligations to follow him, for no one is obliged to do anything against the right; but we must obey God, who desires to have the right, rather than men.

But thou sayest once more: "Yea, worldly power cannot compel to belief. It is only external protection against the people being misled by false doctrine. How else can heretics be kept at bay?" Answer: That is the business of bishops, to whom the office is entrusted, and not to princes. For heresy can never be kept off by force; another grip is wanted for that. This is another quarrel and conflict than that of the sword. God's word must contend here. If that avail nothing, temporal power will never settle the

matter, though it fill the world with blood. Heresy pertains to the spiritual world. You cannot cut it with iron, nor burn it with fire, nor drown it in water. You cannot drive the Devil out of the heart by destroying, with sword or fire, the vessel in which he lives. This is like fighting lightning with a blade of straw.

In a letter written by Luther in early years, concerning the treatment of godless scorners,[1] he expresses this opinion:

Even as no one can be compelled to accept the Gospel, so no magistrate must suffer any one to traduce it. The magistrate must have him up and hear his reasons for acting as he does. If he can give none, then he must be bound over to silence so that the seeds of dissension may not be sown. For whosoever will speak against it must do so openly, the magistrate being called upon to put down all private disputes with all his authority. This is how we do in Wittenberg, and counsel others to do the same. From this you will see that the magistracy dare not tolerate what you speak of in the community; for it is nothing short of a secret scandal. Therefore call them out to the light of day, so that they may either justify themselves or be vanquished.

Along with the decalogue and the catechism inculcate civil (*bürgerliche*) and domestic virtues, and

[1] *Letter to Thomas Fischer, a preacher in Malau, dated August 26, 1519.* See Currie: *Letters of Martin Luther*, p. 47.

these ought most frequently to be the subject topics of preaching, and the people be compelled to attend, so that they may be instructed as to the duties of a subject and social life, whether they approve of the Gospel or not, to prevent them becoming a stone of stumbling to others, by deliberately setting at nought political laws. For if they live in a community, they must learn the laws of the same and obey them, even against their will. And they must do this, not only on account of their possessions, but for the sake of their family.

Luther wrote a letter on another occasion to the Elector John,[1] asking him to silence one Hans Mohr, who was spreading certain doctrines in Coburg. In another letter,[2] he lays down the principle that if unbelievers, after instruction, persist in their views, they should be prohibited from proclaiming them.

In 1528 he wrote in reference to the Anabaptists:

Yet it is not right, and I think it great pity that such wretched people should be so miserably slain, burned, cruelly put to death; every one should be allowed to believe what he will. If he believe wrongly, he will have punishment enough in the eternal fire

[1] *Letter dated January* 9, 1528. *Briefe*, De Wette ed., iii., 256.

[2] *Letter to J. L. Metzsch, August* 26, 1529. De Wette ed., iii., 498.

of hell. Why should he be tortured in this life, too, provided always that it be a case of mistaken belief only, and that they are not also unruly and oppose themselves to the temporal power? . . . These men should be fought off and withstood with scripture and God's word. Fire will do very little good.[1]

Luther wrote to Link:

I am slow to adopt the judgment of blood, even where it is abundantly deserved. I can in no way admit that false teachers should be put to death. It is enough that they should be banished.[2]

He wrote to his friend Cresser:

If the courts wish to govern the churches in their own interests, God will withdraw His benediction from them, and things will become worse than before. Satan still is Satan. Under the popes he made the church meddle in politics; in our time he wishes to make politics meddle with the church.[3]

It is a grave error to say that Luther believed in liberty of thought and speech only for himself

[1] *Brief an zwei Pfarrherren von der Wiedertaufe* (1528). Walch ed., xvii., 2644, 2645.

[2] *Letter dated July* 14, 1528. *Briefe*, De Wette ed., iii., 347. Bluntschli: *Geschichte der neueren Statswissenschaft, allgemeines Statsrecht und Politik*, p. 64.

[3] Hoffman: *The Sphere of the State*, p. 233.

and not for those who disagreed with him.[1] In a letter to the Elector John,[2] he says:

As to the question whether, if his imperial majesty forbid the evangelical preaching, you should submit, my opinion is still the same. The emperor is our lord, the town and all being his, so that as no one should disobey you in your own town of Torgau, neither should it be done in Augsburg. No doubt it would be well if he were humbly asked not to forbid the preaching without hearing it, but to send some one to hear how they preach before condemning it. Certainly his majesty should not forbid the pure preaching of the word, as nothing seditious is being proclaimed. If this do not avail, then might must stand for right. We have done our best, and are blameless.

Luther always and consistently stood for obedience to the lawfully constituted civil authorities, unless there were a specific command to do something explicitly contrary to the word of God. And his attitude was the same whether it concerned his friends or his foes. The constitution

[1] "It must not be forgotten that to take a different side from Luther in any cause was, *ipso facto*, to incur denunciation." Mackinnon: *A History of Modern Liberty*, ii., 92.

[2] *Letter to Elector John the Steadfast, of Saxony, dated May* 15, 1530. See Currie: *Letters of Martin Luther*, p. 213. As a matter of fact, the German Protestant princes did not yield to the emperor in this matter.

of the state and the law of the land were the controlling factors, humanly speaking.

After the Diet of Augsburg of 1530, when the Protestants were given six months within which to renounce their faith, under penalty of being treated as heretics and outlaws, Luther declared in a letter to a friend, speaking of impending war: "If war must come, so let it come. We have prayed and worked long enough."[1] In a warning to the German people against the recess of Augsburg of 1531,[2] he emphasises his attitude of opposition to resorting to violence to settle religious questions. He has urged peace heretofore, but if the Papists will have war and bloodshed, so let it come. Let the worst come. The responsibility lies with them, not with him. It is not rebellion to resist such a fate. It is both a right and a duty, under such circumstances, to resist force with force, if the struggle be begun by others. The real rebel is the one who oppresses others. If the emperor permit himself to be used as a tool to these religious bloodhounds, he simply forfeits his right to obedience, and no God-fearing man ought to obey him. "In such

[1] *Letter to Justus Jonas, dated Sept.* 20, 1530. Walch ed., xvi., 1479–1481.

[2] *D. Martin Luthers Warnung an seine lieben Deutschen (in den ersten Monaten des Jahrs* 1531). Walch ed., xvi., 1616 *et seq.*

a case no man ought to obey the emperor, but should know that such obedience is absolutely forbidden by God and that he who obeys is disobedient to God, and endangers his soul and body to all eternity. For the emperor acts in this case not only against God and the divine law but against his own imperial rights, oath, duty, seal, and edicts." The Saxon jurists appealed to constitutional law, the fundamental law of the empire, to prove that resistance against the emperor might not be unlawful. The emperor was not an absolute sovereign. His power was limited by that of the princes and of the cities. The Schmalkald League (1530–1531) was defensive, not offensive. It was not directed against the emperor or any one else by name. It was for mutual defence against any aggression that might be directed against them or any of them, by whomsoever made. "It was a declaration to the emperor and the majority that might is not right in matters of belief, and that combination and resistance to the oppression of conscience, by even an emperor and a majority in the name of the law, is a Christian duty."[1]

Luther makes a distinction,[2] on the ground of a

[1] Mackinnon: *A History of Modern Liberty*, ii., 118.

[2] *Letter to a citizen of Nürnberg, March* 18, 1531. Walch ed., x., 568 *et seq.*

decision of the jurists, between the Christian and the citizen, the member of the church and the subject of the state. As a citizen, he agrees with the jurists that resistance is admissible. As a theologian, however, without advising any Christian to resist, he leaves it to the individual conscience to decide how to act. In one of his sermons[1] he says:

But how is it when rulers would take the Gospel from us or forbid preaching? Then shall you say: "I shall not grant you the Gospel and the word of God; you have no authority in this matter, for your jurisdiction is temporal, over worldly affairs; but the Gospel is a spiritual, heavenly good, and your authority does not extend over the Gospel and the word of God." We recognise, therefore, the emperor as lord over temporal matters, and not over the word of God. . . . To the emperor and civil authority there is due fear, custom, tax, tribute, and obedience. The heart belongs to God, but the body and estate are under civil authority, which rules over them in God's place.

In another sermon on the same Gospel lesson, Luther says further[2]:

[1] From *Kirchen-Postille:* Am dreiund zwanzigsten Sonntage nach Trinitatis, *Matt.* xxii., 15–22,—"Gebet dem Kaiser, was des Kaisers ist, und Gotte, was Gottes ist." Walch ed., xi., 1802 *et seq.*

[2] *Kirchen-Postille:* "Gebet dem Kaiser was des Kaisers ist,

In these words, too, the measure and limit is set to rulers that they so govern as not to take from their subjects what does not belong to them, but to consider that they also give and do, as they are under obligations, that is, govern land and people that they may prosper and flourish. For to this end are they set in civil authority, and not that they should there sit as thieves and do according to their own lusts. . . . The words of this text do not say, "Give to the emperor what he wants and covets," but it places a limit to how far he may reach. It says, what belongs to the emperor, or that to which he has a right; for what is termed his, that must be his by right.

Therefore man must not so rule in the state, towns, and homes as he himself desires, as a lord might go about over his estate according to his own will, with his servants and labourers; for it is declared thus: I am under obligations to give you what is yours as my lord, not what you yourself want to have.

So, too, if a mayor, official or other ruler oppress and plague the people according to his own wantonness; that is not seigniorial right, but as truly stolen and taken from them as when another robs.

To Luther the right and the field of civil authority, therefore, has its limitations. It must be admitted that, in spite of the ruggedness of his

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und Gotte was Gottes ist." Zweite Predigt. Walch ed., xi., 1816 *et seq.*

character, the brusqueness of his language, and the vigour of his opposition to the foe, he was by far the mildest and most tolerant of the great reformers of his century.[1]

It is an error to suppose that Luther materially changed his views on the subject of the relation of church and state[2]; or that he conceded to the state *per se* the right of regulating the ordinances of the church, though the church might confer ecclesiastical functions upon a civil ruler. Owing to the necessities and circumstances of the case, Luther looked upon the princes as provisional bishops, or bishops by necessity (*Nothbischöfe*). He aimed personally to keep church and state distinct and separate; but the developments and the needs of the times brought the church under

[1] Beard: *The Reformation of the Sixteenth Century*, in *Hibbert Lectures* (1883), p. 178.

[2] An interesting study of this subject of the relation of church and state will be found in the following works:— Geffcken: *Church and State.* (A discriminating discussion of Luther's attitude in the matter is given in i., 289 *et seq.*) Hoffman: *The Sphere of the State*, chap. xiii. Gierke: *Political Theories of the Middle Age.* Humboldt: *The Sphere and Duties of Government*, chap. vii. Bluntschli: *The Theory of the State*, p. 39 *et seq.* Prall: *The State and the Church*, chap. iv. Crapsey: *Religion and Politics.* Stanley: *The Connection of Church and State* in *Essays chiefly on Questions of Church and State*, pp. 344–377. Curteis: *The Three Conflicting Theories of Church and State*, in *Contemporary Review*, February, 1878.

the care of the princes, and there it has remained, in Germany, for centuries. "State churchism was nothing but a makeshift required by the exigencies of the times. As a permanent institution it is not in harmony with Luther's fundamental doctrines."[1]

It was but the natural, almost inevitable, result that Luther's teaching as to religious liberty should eventually lead to political liberty.[2] Mr. Bryce, in reviewing this subject, says of the Reformation:

> It became a revolt against the principle of authority in all its forms; it erected the standard of civil as well as of religious liberty, since both of them are needed, though needed in a different measure, for the worthy development of the individual spirit. . . . The empire had never been conspicuously the antagonist of popular freedom, and was, even under Charles the Fifth, far less formidable to the commonalty than were the territorial princes of Germany. But submission, and submission on the ground of indefeasible transmitted right, upon the ground of catholic traditions and the duty of the Christian magistrate to suffer heresy and schism as little as the parallel sins of treason and rebellion, had been its constant claim and watchword. Since the days

[1] Nuelsen: *Luther the Leader*, pp. 179, 180.

[2] Hartranft's *Biographical Sketch of Luther*, in *The Library of the World's Best Literature, Ancient and Modern.*

of Julius Cæsar it had passed through many phases, and in so far as it was a Germanic monarchy, it had recognised the rights of the vassals and had admitted the delegates of the cities to a place in the national assembly. But these principles of the mediæval monarchy, half feudal, half drawn from Teutonic antiquity, principles themselves now decaying, had little to do with the religious conceptions and the Roman traditions on which the theory of the empire rested. In that theory there was no place for popular rights. . . . And hence the indirect tendency of the Reformation to narrow the province of government and exalt the privileges of the subject was as plainly adverse to what one may call the imperial idea as the protestant claim of the right of private judgment was to the pretensions of the papacy and the priesthood.

The remark must not be omitted in passing, how much less than might have been expected the religious movement did at first actually effect in the way of promoting either political progress or freedom of conscience. The habits of centuries were not to be unlearnt in a few years, and it was natural that ideas struggling into existence and activity should work erringly and imperfectly for a time.[1]

Speaking likewise of the Reformation, a German historian says:

That by its influence on Germany, on the Netherlands, on England, and, for a considerable period, on

[1] Bryce: *Holy Roman Empire*, pp. 380, 381.

France, it became the origin of political freedom in Europe, can be a matter of doubt only to those who "having eyes, see not"; and this once admitted, it will not be difficult to show that the same causes led to its being the origin of political speculation also.[1]

An author of distinction in this field of investigation makes the following comment:

It remains an everlasting title to glory of the Reformation that political liberty—which has nothing necessarily in common with democracy—first became possible through its principles, in a manner very different, indeed, to that of antiquity, when the civil importance of a small minority rested upon the dark background of the slavery of the masses. The principles of liberty of conscience and of universal priesthood, which make man inwardly free, lead also involuntarily to outward liberty. A people who no longer feel themselves in the position of an obedient and submissive laity, at the service of a privileged clergy, will refuse to continue any longer in a state of passive obedience to the government, without any rights of their own.[2]

In successfully protesting against worldly compulsion in matters of conscience, Luther was thus the first in Europe effectively to raise the banner of religious liberty. His teaching was a revelation

[1] Heeren: *Historical Treatises*, p. 120.
[2] Geffcken: *Church and State*, i., 309.

in the field of European politics, as well as religious doctrine. It spread like wild-fire throughout the continent, and its influence is seen in the political literature of those countries already in the sixteenth century.[1]

The fact that this movement "was a product of the Germanic spirit is evinced plainly enough by its having taken hold of the Germanic peoples of northern Europe alone. These are also the nations whose inhabitants possess the widest degree of liberty to-day." [2]

The Reformation emphasised the individual and individual rights and powers that cannot be properly or permanently controlled by the state. Any attempt to do so will only weaken the state as well as the individual. There is a limit to the power of the despot as well as to that of the democracy. "The cold hand of the state should not press upon the inner kingdom of the soul."[3]

According to the modern view, there are natural and imperative limits to state action. Freedom of opinion and of speech are two necessary liberties of a people, and in consequence of the recognition of this principle, the freedom of the press

[1] Gumplowicz: *Geschichte der Staatstheorien*, pp. 155–157.
[2] Scherger: *The Evolution of Modern Liberty*, p. 36.
[3] Renan: *Les Apôtres*. Quoted by Innes: *Church and State*, p. 7.

is sacred in all free countries.[1] "Religion and science and art have their separate and well-marked provinces, in the administration of which they may wisely seek for the co-operation, though they will always jealously avoid the dictation, of the state."[2] Thought and conscience are private; opinion is optional.[3] Religion is not a condition of legal status.[4] "The state cannot make men think, speak, or hold what religious beliefs it pleases. It has no power to do this, and therefore it has no right to attempt it; for whatever it attempts without having also the power to effect it is a sign of its weakness, impotence, or incapacity, and of its ignorance of its proper function and work."[5] "Faith cannot impose itself, and cannot be adopted for the sake of anything,—violence, deception, or utility; and hence it is not faith, but the delusion of faith."[6]

No state can possibly usurp this inalienable right of freedom of moral and religious belief which is invested in the individual, however high or low that individual may stand in the scale of civilisation. Freedom of thought, of speech, and of

[1] Woolsey: *Political Science, or the State*, i., 272, 273.
[2] Blackie: *What does History Teach?* p. 99.
[3] Wilson: *The State*, pp. 637, 638.
[4] Bluntschli: *The Theory of the State*, p. 58.
[5] Duff: *Spinoza's Political and Ethical Philosophy*, p. 471.
[6] Tolstoi: *Church and State*, p. 11.

religious belief, belong to every individual alike; and the state that seeks to regulate or compel in these matters attempts the impossible and only contributes to its own downfall.[1]

But "while thought and belief are, and must always remain, *sui juris*, or an inalienable function of the individual, *action* never can thus be an individual right."[2] There must be one common and sovereign authority in the state to control human action; but there is no such authority over the mind. On this subject, Macaulay declares: "The protestant doctrine touching the right of private judgment—that doctrine which is the common foundation of the Anglican, the Lutheran, and the Calvinistic churches—that doctrine by which every sect of dissenters vindicates its separation—we conceive not to be this, that opposite opinions may both be true; nor this, that truth and falsehood are both equally good; nor yet this, that all speculative error is

[1] In a letter to the Presbyterians of New Hampshire and Massachusetts—published in the *Massachusetts Sentinel*, December 5, 1789—George Washington replied to their complaint as to the omission of the name of God in the Constitution of the United States, by asserting that it "belonged to the churches, and not to the state." Straus: *The Origin of Republican Form of Government in the United States of America*, p. 69.

[2] Duff: *Spinoza's Political and Ethical Philosophy*, p. 487.

necessarily innocent;—but this, that there is on the face of the earth no visible body to whose decrees men are bound to submit their private judgment on points of faith."[1] The government that fails to recognise these rights of the individual and secure them to him does not have a right to exist. Humboldt declares: "Reason cannot desire for man any other condition than that in which each individual not only enjoys the most absolute freedom of developing himself by his own energies, in his perfect individuality, but in which external nature even is left unfashioned by any human agency, but only receives the impress given to it by each individual of himself and his own free will, according to the measure of his wants and instincts, and restricted only by the limits of his powers and his rights."[2]

Referring, again, to the personal freedom that the state should secure to its citizens, the same writer lays down the following principle:

> In order to provide for the security of its citizens, the state must prohibit or restrict such actions, referring immediately to the agents alone, as imply the infringement on others' rights in their consequences,

[1] Macaulay: *Critical and Miscellaneous Essays*, iii., 296, 297.

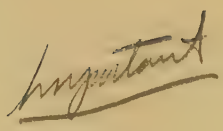
[2] Wilhelm von Humboldt: *The Sphere and Duties of Government*, pp. 17, 18.

or encroach in these on their freedom or property without or against their will; and further, it must forbid or restrict these actions when the probability of such consequences is fairly to be apprehended,—a probability in which it must necessarily consider the extent of the injury feared, and on the other hand the consequences of the restriction on freedom implied in the law contemplated. Beyond this, every limitation of personal freedom is to be condemned, as wholly foreign to the sphere of the state's activity.[1]

The problem of the present day is to combine the rights and the interests of the individual and of the state, so to develop the state to its fullest perfection without annihilating individuality, and, at the same time, to make the most of the individual without undermining the sovereignty of the state.[2]

[1] Wilhelm von Humboldt: *The Sphere and Duties of Government*, p. 127.

[2] M'Kechnie: *The State and the Individual*. p. 72.



CHAPTER X

AN ESTIMATE OF LUTHER'S PLACE IN THE HISTORY OF THE THEORY OF THE STATE

IT is difficult to follow, in almost any case, the direct not less than the indirect influence of a new truth or of a great principle; but, once deeply stirred by a great conception of truth, of opportunity, or of duty, a people is never again the same. In speaking of the Reformation, Carlyle invites attention to this thought. "Once risen into this divine white heat of temper," he says, "were it only for a season and not again, it is henceforth considerable through all its remaining history. Nations are benefited for ages by being thrown once into divine white heat in this manner, and no nation that has not had such divine paroxysms at any time is apt to come to much."

An idea, a concept, a truth, does not originate with the mass, but with the individual. Every invention, every discovery, every truth, every principle, comes, in the first instance, not from the many nor from the few, but from the one.

"The moving force in society," says Mr. Taylor,[1] "is personality. No movement, however great, but had its source in a single mind; it may change the map of a continent, decide the fate of empires and races; it may divide the world like the Reformation; but its beginning, if it could only be traced to its fountain head, would be found in the thought of a single person, a person in all probability entirely ignorant of the power and purpose of that germ idea. Such an idea spreading to other and yet other minds, becoming mixed with other ideas, undergoing strange transformations in the process, but ever growing in clearness and force as time passes on, develops at last into that mighty thing, a public opinion."

In a given case it may be possible to locate the fountain source. In the case of the great reformer of the sixteenth century it is possible to trace his words, his works, and his influence, not only on his own race and age, but on many other peoples from that day to this. "He became the mouthpiece, the prophet of all those who were sighing under the yoke of foreign tyranny and yearning for national and social liberty."[2]

"That the Reformation was able to establish itself in the shape which it assumed," we are

[1] Taylor: *The Individual and the State*, p. 72.
[2] Nuelsen: *Luther the Leader*, p. 86.

told by a great historian,[1] "was due to the one fact that there existed at the crisis a single person of commanding mind as the incarnation of the purest wisdom which then existed in Germany, in whose words the bravest, truest, and most honest men saw their own thoughts represented; and because they recognised this man as the wisest among them, he was allowed to impress on the Reformation his own individuality. The traces of that one mind are to be seen to-day in the mind of the modern world. Had there been no Luther, the English, American, and German peoples would be thinking differently, would be acting differently, would be altogether different men and women from what they are at this moment."

Any brave man who fears nothing on the earth or under it, who is willing to declare himself faithful to his conscience and to the word of God, in the presence of an imperial and ecclesiastical hostility that suggests the stake, and who hurls defiance at Satan and all his hosts, commands our attention and merits our consideration. It is not the purpose or province of this study to refer to Luther's faith, work, and influence as a religious reformer, or in any way to his ecclesiastical attitude or activities.

[1] Froude: *Luther*, p. 4.

It is the sole function of this work to direct attention to his views, his writings, and his influence on matters pertaining to the theory of the state. It is true that it was in the course of his religious reform that he was led almost inevitably to suggestions of political reform. The doctrine of the Middle Ages was that the church was supreme over the state; the clergy were held to be morally superior to the laity. They were held as exempt, even as to all civil affairs, from the temporal authorities and the laws of the land. By baptism a man entered the fold of the church and the rights of citizenship. By excommunication he lost his standing in church and state. The state, indeed, was viewed as an arm of the church to carry out its will. It was the emperor's duty to place under the ban the heretic and the excommunicate. Failing to do so, he incurred the penalty of the interdict on land and people. The schismatic and the heretic had no rights before the law. This principle was rarely denied till the Reformation. Admitted by Roman Catholic princes, and founded on the Code of Justinian, it was the basis of the popes' claim of the right to depose sovereigns.[1]

Luther denied to the church any authority

[1] See Figgis: *Studies of Political Thought from Gerson to Grotius*, p. 17.

over the state.[1] He declared that the ecclesiastical officer has no coercive authority. The state alone possesses this power. The spheres of church and state are absolutely separate and distinct.[2]

Thus the ecclesiastical Reformation led to a political one.[3] The sphere of the state was extended to include every one within its borders and to include temporal affairs of every kind. "On the whole," says a recent writer, ". . . the supremacy of the common law of the land upon every one within its borders, including the clergy, triumphed universally with the Reformation."[4] The Reformation, therefore, was not only a

[1] After the abdication of Charles V, the Imperial Diet declared it unnecessary for the emperor to be crowned by the pope. Case: *European Constitutional History*, p. 112.

[2] "By Luther's entire conception of the nature of the church and ecclesiastical authority, moreover, every extension of that authority, as divinely ordained, to the sphere of temporal, political, or civil life was excluded." Koestlin: *Luther*, i., 308.

[3] "Religious forces, and religious forces alone, have had sufficient influence to ensure practical realisation for political ideas. Reluctantly, and in spite of themselves, religious societies were led by practical necessities to employ upon their own behalf doctrines which are now the common heritage of the Western world. In fact, that world, as we live in it and think it, was really forged in the clash of warring sects and opinions, in the secular feuds between the clergy and laity, Catholic and Protestant, Lutheran and Calvinist." Figgis: *Studies of Political Thought from Gerson to Grotius*, p. 6.

[4] *Ibid.*, p. 69.

religious and an intellectual, but a political revolt, as it was also a revolt of the individual against class or caste. "This great revival was set in a picturesque framework of human impulses, political, intellectual, moral, social, and economic, such as the world has seldom seen before or since." [1] It is a great mistake, a grievous error, to regard the movement of which Luther was the source and the centre as purely religious. "However much Luther might seek to narrow the reform movement within the limit of his own spiritual experience, it was not possible to shake himself free from these political, intellectual, social influences of the time, and he in turn contributed by his reforming teaching and fervour to quicken these influences. He was or became, willingly or unwillingly, wittingly or unwittingly, the instrument, not merely of a religious reformation but of a many-sided revolution."[2] The practical application of the theological, ecclesiastical, and ethical elements of the Reformation involved questions of most far-reaching political and social import.[3] Although these political consequences of the Reformation did not manifest themselves all at

[1] Lindsay: *Luther and the German Reformation*, p. 1.
[2] Mackinnon: *A History of Modern Liberty*, pp. 49, 53, 54.
[3] Dunning: *A History of Political Theories from Luther to Montesquieu*, p. 2.

once, "the results of this movement upon the enfranchisement of the individual could not but show themselves sooner or later."[1] "The habits of centuries were not to be unlearnt in a few years, and it was natural that ideas struggling into existence and activity should work erringly and imperfectly for a time."[2]

Luther demanded the right to think for himself. The mind of man may not be, cannot be, formed or changed by mere physical force or fiat of human government, whether ecclesiastical or civil. Once asserting and maintaining the freedom of the individual conscience, it must inevitably include the political as well as the religious field of thought.

Luther was thus the liberator of modern thought. External force cannot control thought, the mind, the conscience. Secular government has no authority over matters of belief.[3] Human government cannot claim the right to rule except in that realm where it can see, know, recognise, and judge. To assert that it has such right or such power is as absurd as to declare that it has authority to command the sun or moon to shine or the earth to revolve. A new era began with

[1] Scherger: *The Evolution of Modern Liberty*, p. 36.

[2] Bryce: *The Holy Roman Empire*, p. 381.

[3] Dunning: *A History of Political Theories from Luther to Montesquieu*, p. 12.

Martin Luther's firm stand so forcibly stated in his great treatises of 1520, so vividly shown in his burning of the papal bull of excommunication in the presence of a large concourse of people, and yet again so fearlessly and so publicly taken at the Diet of Worms, in the presence of the highest and most powerful ecclesiastical and imperial authority of the age. This last scene,—which has been termed one of the finest, perhaps the very finest, scene in human history—is unquestionably a landmark in the development of the modern political world. In spite of excommunication from the church, in spite of the ban of the empire, the world had changed in so far that, though protected by the Wartburg retreat for almost a year, Luther was thereafter practically safe, with freedom to come and go at will among a liberty-loving people for the remaining quarter of a century of his life.[1] The rights of the individual conscience had been discovered, and the ban had lost its sting. The old and the new met in the presence and in the persons of Charles V., the

[1] The historian Froude tells us that Luther did not attend the Imperial Diet at Augsburg, in 1530, however, because, being under the ban of the empire, he could not be permitted to appear in the presence of the emperor. Froude: *Luther*, p. 53. Within half a year after Luther's death, his elector, John Frederick, was put under the ban of the empire, and the imperial army was sent against him.

emperor, and Martin Luther, the monk. The aim and the effort of the young Emperor to turn time and the world backward for centuries proved futile; and Luther gave the Holy Roman Empire its death-blow.[1]

The Teuton has been known throughout his history as a lover of liberty.[2] For the first conception of the modern constitutional and popular government, we are taken to that section of Europe lying between the rivers Rhine and Elbe and to the east of the Elbe. "The civilisation of the present age and the peoples who enjoy the blessings of liberty and freedom owe a great debt of gratitude to the pioneers of these German forests, for between the Rhine and the Elbe rivers and to the east of Elbe, among these early invaders of the unknown forests, breathed the first spirit of true liberty based on limited and popular government, as now practised by the English-speaking peoples. There it was conceived and had its birth; there its works and blessings developed a people not of art and eloquence, not of fancy, philosophy, and literature, but of plain and strong morals and

[1] Figgis: *Studies of Political Thought from Gerson to Grotius*, p. 67.

[2] "To the Teuton individual freedom is the supreme thing. He is induced to sacrifice a part of it to the state in order to keep the rest all the more securely." Bluntschli: *The Theory of the State*, pp. 41, 42.

natural endowments, with a burning desire in their conscience for justice and for humanity—a people who were to go forth destined to rule and to plant their principles of freedom and liberty in the hearts and consciences and minds of the human family."[1]

But Luther's *Appeal to the German Nobility* was "really the first definite announcement that Germans ought to work all together for a united Germany, and was the first practical step taken in the movement to create a German nationality which has made such an advance in our own generation, and whose end is not yet."[2]

After continued efforts on the part of the estates of the realm to secure effective, uniform imperial legislation and action to protect themselves and their subjects against foreign interference and aggression, and against continual internal disturbance and petty warfare, as it was felt absolutely necessary to have a stronger civil government for the protection of all rightful interests and the punishment of evil-doers, there was no solution to the problem but for each elector, each

[1] Tapp: *The Story of Anglo-Saxon Institutions, or the Development of Constitutional Government*, pp. 39, 40.

[2] Lindsay: *Luther and the German Reformation*, pp. 107, 108. "Modern states are essentially national states." Bluntschli: *The Theory of the State*, p. 56.

prince, each free city, to take measures to accomplish the necessary reforms. This undoubtedly would have happened, in view of the necessity, though the religious Reformation had not come about; and this increasing authority and power of the separate states of the empire cannot be attributed—certainly not entirely—to Luther's teaching. Luther, personally, would have strengthened the nation and the national power as a unit; but, under the circumstances of the case, the nation, with a peculiarly weak confederacy of the whole, was unequal to the task, and the natural and inevitable result was a stronger, unitary, individual state. Charles V had a golden opportunity, but he failed to see or use it. We have no right, it must be admitted, to demand that Charles V, on the one hand, or that Luther, on the other hand, should see matters of this nature in the light that the developments of centuries have enabled us to see them. Both of them must be judged in the light of their age.

That Luther changed his views to a limited degree on certain subjects connected with civil government is only to say that he became wiser in the light of new developments and larger experience; but on essential points he is absolutely consistent in all his writings and in all his actions alike. That the years following his activity

brought a reaction along some lines is an historical fact for which he is in no way responsible. In his own day, he did not change the map of the political world to any appreciable extent, but he did change the field and the sphere of inalienable individual rights. His sober and vigorous criticism of political conditions operated as a mighty impulse in the field of the theory of the state, and his teaching operated in the European field of politics as a new revelation.[1] In the light of the truths and principles asserted by him, it may truly be asserted of him and his age: "The enduring work of the sixteenth century was the modern state. Its legal omnipotence and unity, the destruction of all competing powers, separate or privileged, were assured, and a universal all-embracing system of law became possible."[2]

The date of the beginning of the modern age has been much discussed by various writers viewing the subject from different standpoints. Mr. Bluntschli, for example, dates the modern era from the year 1740. He gives the following reasons for this selection:

The rise of the Prussian kingdom, Joseph II's reforms in Austria, the foundation of the United

[1] Gumplowicz: *Geschichte der Staatstheorien*, pp. 55–57.

[2] Figgis: *Studies of Political Thought from Gerson to Grotius*, p. 133.

States of North America, the changes of the French Revolution and the Napoleonic empire, the transplanting of constitutional monarchy to the continent, the attempted introduction of representative democracy, the foundation of national states, the gradual removal of religious privileges and disabilities in public law, the separation of church and state or at least the clear demarcation between their spheres, the abolition of feudalism and of all privileged orders, the rise of the conception of national unity, the recognition of the freedom of society,—all these are the achievements or at least the attempts of the modern state.[1]

Mr. Sidgwick, considering the movement to absolute monarchy, is disposed, from that point of view, to place the beginning of modern history "in the middle of the seventeenth century—treating the period of the Renaissance, and the period of the Reformation and the religious strife that followed, as constituting a long transition between mediæval and modern thought. By the middle of the seventeenth century the treaty of Westphalia (A.D. 1648) has closed the period of religious wars; and then, or not long after, it is clear that in most West European states, monarchy is predominant over elements in the state that have struggled with it." [2]

[1] Bluntschli: *The Theory of the State*, pp. 52, 53.

[2] Sidgwick: *The Development of European Polity*, p. 323.

Yet another writer, tracing by stages the democratic revolution in the life of the western world, declares that the fourteenth and fifteenth centuries delivered the kings from the domination of the church and the empire; the sixteenth and seventeenth centuries made the kings subordinate to the nobility and the gentry; the eighteenth and nineteenth centuries saw the middle class become dominant; and that there now remains to be accomplished the supremacy of the hand-worker and the wage-earner—the common people.[1]

These several views, however, consider the beginning of the modern age rather from the standpoint of practical politics. When we review the various political principles enunciated by Luther, we cannot but recognise and acknowledge that the fundamental and inalienable rights of the individual and the unquestioned duties of the state, as held in the modern civilised world, are clearly set forth by him in the first half of the sixteenth century. Known and widely proclaimed as a theologian, a university professor, a preacher, a poet, a hymn writer, a musical composer, a humourist and satirist, a naturalist, the modern world loses sight of his position and influence in the field of politics as a teacher, a prophet, a statesman.

[1] Crapsey: *Religion and Politics*, p. 283.

SUMMARY OF LUTHER'S POLITICAL PRINCIPLES

I. The origin of the state. The state, as natural and necessary to man, is as truly divine in its origin as the creation of man himself; though the nature or the form of government that may be established is a matter of human determination.

II. The sovereignty of the state. The state possesses exclusive coercive authority. To it, in its sovereignty, belongs all legislative, executive, and judicial jurisdiction in temporal affairs. This jurisdiction extends over every individual within the territory of the state—ecclesiastic and heretic included. Status in the church does not affect or determine status in the state. The state does not hold or wield a sword in the interests of the church.

The national state is the natural unit of civil government. Foreign interference—whether ecclesiastical or civil—is not to be tolerated. Every individual is in duty bound to obedience to civil authority, legally constituted and exercised, unless it be a command to do that which is explicitly prohibited by the word of God.

A government may be constitutionally reformed or altered. Illegal or unconstitutional government may be overthrown. *Ultra vires* commands or acts have no force or validity. Submission is not

a duty and self-defence is a right of the individual in case of tyranny.

III. The objects of the state. The primary object of the state is to protect the good, punish the wicked, and maintain public peace. Civil government is to be conducted in the interests of the governed—not of any particular person or persons, any class or classes, but on behalf of all the people. Whatever the form of government —as Luther expresses no preference—civil authority is a sacred trust. To every man is to be given equal consideration and opportunity, under similar conditions.

IV. The functions of the state. It is the duty of the state to educate its youth not only in the secular field of learning, but also along moral and religious lines. It should care for its poor, protect its subjects against monopolies, extortion, gambling, and public immorality.

V. The limits of the state. Religious and civil liberty—of conscience, speech, and press—are inalienable rights belonging alike to every individual, subject only to the equal rights of others, the maintenance of public peace and order, and the sovereign power of the state over the external life, where it touches the lives of others.

In all these respects, Luther lives yet to-day,

for these principles are the fundamental ones in force under the enlightened governments of the world at the beginning of the twentieth century. Nor have we yet fully realised his ideals. Perhaps we never shall.[1] Leopold von Ranke regarded the Reformation as a great political force working political transformations not yet ended. The best thought and the highest political leadership of the age is calling now, not for more, but better government, not wealth for the favoured few, not government in the interests of a certain class or classes, but on behalf of the masses and of the people as a whole. The government itself, in Luther's view, may be by prince or people, but it must be government *for* the people. To this end it is a trust from above.

In the light of his attitude on all these political questions, we must recognise in Luther not merely a prophet, or a forerunner, but the founder of the modern theory of the state; not that he secularised it, but he declared it to be absolutely separate and distinct from the church and the sole possessor of coercive authority and sovereign power; and

[1] "The idea or ideal of the state presents a picture, in the splendour of imaginary perfection, of the state as not yet realised, but to be striven for." Bluntschli: *The Theory of the State*, p. 15. This may be truly said of Luther's *Staatsidee*.

with this theory of the state, he declares the inalienable liberty of the mind of man, of the human soul, of the individual conscience. "The dearest goods of our estate," says Dr. Hedge, "civil independence, spiritual emancipation, individual scope, the large room, the unbound thought, the free pen, whatever is most characteristic of this New England of our inheritance—we owe to the Saxon reformer. . . . Modern civilisation, liberty, science, social progress, attest the world-wide scope of the protestant reform, whose principles are independent thought, freedom from ecclesiastical thrall, defiance of consecrated wrong."[1]

Luther was a German, but he is claimed to-day by all lands and all civilisations as an epoch-maker,[2] as a beacon light of history, for he is the

[1] Hedge: *Commemorative Discourse, Massachusetts Historical Society*, 1883, pp. 17, 39.

[2] "The acknowledgment of the political rights of the middle classes may . . . be said to date from the Reformation only." Wace and Buchheim: *Luther's Primary Works*, p. 463.

"Luther created an epoch in the world's history." Mackinnon: *A History of Modern Liberty*, ii., 108.

Even Döllinger admits that Luther "has stamped the imperishable seal of his soul alike upon the German language and the German mind: even those Germans, who abhor him most as the powerful heretic and the seducer of the nation, cannot escape; they must discourse with his words, they must think with his thoughts." Lindsay: *Luther and the German Reformation*, p. 266.

founder of modern liberty; his "service to mankind was nothing less than the successful declaration of individual freedom of conscience from the dictates of any human authority."[1]

"It is not incorrect to say that Luther has been the restorer of liberty in modern times," says a Roman Catholic historian.[2] "If he denied it in theory, he established it in practice. If he did not create, he at least courageously affixed his signature to that great revolution, which rendered the right of examination lawful in Europe. And if we exercise in all its plenitude at this day this first and highest privilege of human intelligence, it is to him we are mostly indebted for it; nor can we think, speak, or write, without being made conscious at every step of the immense benefit of this intellectual enfranchisement. To whom do I owe the power of publishing what I am even now inditing, except to the liberator of modern thought?"

The Reformed historian, D'Aubigné, declares: "Luther was the first to proclaim the great principles of humanity and religious liberty. He was far beyond his own age, and even beyond many of the reformers, in toleration."

The American historian Bancroft asserts:

[1] Muzzey: *Spiritual Heroes*, p. 302.
[2] Michelet: *The Life of Martin Luther*, p. xii.

"Luther repelled the use of violence in religion; he protested against propagating reforms by persecution, and with a wise moderation he maintained the sublime doctrine of freedom of conscience."

The secretary to the Catholic Union of Great Britain, the Roman Catholic historian, Lilly, assures us that it is not only in the distinctly religious domain that Luther's teaching has been so influential and so far-reaching. He declares that the French Revolutionists were debtors to Luther for that doctrine of the sovereignty of the individual which is the very foundation of Rousseau's *Contrat Social*, and of *The Declaration of the Rights of Man and the Citizen*, formulated by Rousseau's disciples.[1]

The priceless blessings of liberty and the rights of conscience recognised, enjoyed, and guaranteed in our own great republic, and working like leaven among all peoples who do not enjoy them, are, directly and indirectly, the result of the truths and principles so clearly and so forcibly proclaimed by Martin Luther nearly four hundred years ago.[2]

[1] Lilly: *Renaissance Types*, p. 299.

[2] Charles Dudley Warner declares: "The United States, Great Britain and its world-encircling colonies, Holland and its dependencies, the German empire, are to-day what they are largely because of the life of Martin Luther." Scherer: *Four Princes*, p. 242.

APPENDIX

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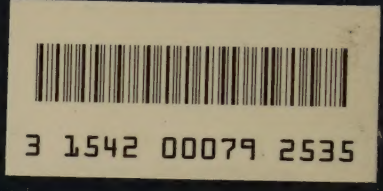
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